OVERSIGHT OF THE DEPARTMENT OF TRANSPORTATION'S COMMERCIAL AIR CARRIER FITNESS POLICY, FOCUSING UPON THE PROPOSED PRIVATIZATION OF TRANS WORLD AIRLINES [TWA]

[100-77]

HEARING

BEFORE THE

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

SEPTEMBER 29, 1988

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OVERSIGHT OF THE DEPARTMENT OF TRANSPORTATION'S COMMERCIAL AIR CARRIER FITNESS POLICY, FOCUSING UPON THE PROPOSED PRIVATIZATION OF TRANS WORLD AIRLINES (TWA)

THURSDAY, SEPTEMBER 29, 1988

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 2167, Rayburn House Office Building, Hon. James L. Oberstar [chairman of the subcommittee] presiding.

Mr. Oberstar. The subcommittee will come to order.

Three years ago, this subcommittee began an in-depth look at the air carrier certification program carried out by the Department of Transportation in cooperation with the FAA. It was right at the time when a tragic aircraft accident involving Galaxy Airlines had just occurred—an accident that took the lives of 69 people. Only one survived.

What we found was in that twilight zone between the sunset of the CAB and the assumption by DOT of certification responsibilities, the carrier was certified and allowed to operate with substantial management deficiencies and substantial financial problems, somehow, nonetheless, the air carrier managed to slip through the sieve of review and consideration by Federal Government agencies with responsibility for sorting out those important matters of fitness and ability to serve the public. An unfit carrier, manifestly unfit, as subsequent hearings demonstrated, was allowed not only to be certificated but to operate.

Earlier this summer, our subcommittee reviewed FAA's enforcement program, looking at the situation surrounding Ryan Air in Alaska. As in the Galaxy Airlines situation, we saw certificate action taken by the department, but only after 18 people died in a crash. In looking at that carrier's enforcement history, we wondered why it took an accident and more deaths to ground that carrier. To their great credit, the Department of Transportation tightened up the review of fitness among carriers and tightened its process for termination of certificates that were dormant and of those carriers who were manifestly unfit to serve the public.

Happily, we are not here today to discuss fitness as the result of an accident, fitness in which lives have been lost, or an appalling safety record, as in the case of Ryan Air. Today we are being prospective rather than retrospective. As chairman of this subcommittee, it has been my goal to focus on potential problems before they turn into tragedies. That is what DOT's initial and continuing fitness program should do.

In June 1985, the current chairman and owner of TWA, Carl Icahn, came before another subcommittee of this Committee on Public Works and Transportation, the Subcommittee on Aviation. Members were skeptical—it was feared that once Mr. Icahn gained control of TWA, he would sell his assets and move on to take over another corporate victim. But Mr. Icahn assured the members of that subcommittee that he was "committed to the long-term interests of TWA, its employees, and the traveling public." Now, Mr. Icahn has proposed a plan to privatize TWA. We want to know, before that action becomes final, how that transformation of this carrier is going to be in "the long-term interest of TWA, its employees, and the traveling public."

Reason for concern has been underscored by a number of reports, the principal one being a cover story in Barron's Financial News that says,

> On the surface, as intimated, he [Mr. Icahn] has pulled the airline out of its nosedive, and in a relatively short span, turned a financially ailing company into a healthy and growing enterprise. However, careful inspection reveals that what Icahn has really done is to restructure the airline into a hollow shell filled with debt, and assure that much of the cash and stocks bought with the proceeds of the debt will wind up in his hands.

We have looked at the company's own figures and balance sheets, and it appears that TWA, after privatization, will have a negative equity of $7 million. The airline assures us not to worry—they have an additional $772 million worth of assets not reflected anywhere on its balance sheets or in its SEC filings.

As a member of the House Budget Committee and one who has grappled with our deficit, I am interested in learning more about what I observe to be such creative accounting. To dismiss these concerns as a labor/management issue would be shortsighted and irresponsible on our part. Members of the subcommittee remember very well one airline's abuse of the minimum equipment list, which was dismissed as a labor/management issue.

There are serious and legitimate questions surrounding the financial maneuverings at TWA. From a public policy standpoint, is there any difference between an airline that loses money trying to operate or an airline that goes into debt because its owner chooses to play the stock market? I think it is a legitimate question as to whether the government's license to provide air service should be used for financial maneuverings that do not have much to do with airline service. We want to know the DOT's policy on matters of this kind. How is it going to carry out its fitness responsibility in a situation where an owner could place an airline in a tangled financial spiderweb that might leave passengers who are holders of advanced ticket sales as unsecured creditors without a claim.

All of these financial maneuverings may prove indeed to be very beneficial to the airline, and they might prove to be a disaster. We do not know which way that airline will turn as a result of intended financial operations. Now is the time to ask the questions. Now is the time to find out what exactly is the policy of the Department of Transportation. Now is the time to find out what TWA's intentions and Mr. Icahn's plans and commitments are. Afterward will be too late. Afterward will be cleanup time. The public's interest in safe, efficient air service requires us to ask those questions today, not the day after the new deal is consummated.

The Chair recognizes the chairman of the full Committee on Public Works and Transportation, Mr. Anderson, for a statement.

We are very honored to have Chairman Anderson with us today. He is a former Chairman of the Aviation Subcommittee and is a man who knows a great deal about aviation.

Mr. **ANDERSON**. Thank you, Mr. Chairman.

Although our committee's water resources development bill is tentatively scheduled for floor action tomorrow, and is thus taking up much of my time, I did want to stop by at this hearing to thank all of our witnesses for being here today and to congratulate you in particular for holding these hearings.

If you will recall, when I chaired the Subcommittee on Aviation, and when we passed the landmark Airline Deregulation Act of 1978, nearly all of us agreed that the market place should be the governing force in the industry. Although many airline executives initially opposed deregulation, the argument prevailed that we should end 40 years of strict government control over the airlines' basic—and I emphasize "basic"—operating decisions. With this in mind, I want to underscore the point that there was also a basic agreement that airline personnel should not be forced to carry the burden of deregulation, which brings us to today's hearing.

Today, we will discuss a most unique situation, never contemplated during the airline deregulation debate 10 years ago. The purpose of this hearing is, of course, to focus attention on the proposed privatization plan of Trans World Airlines by Carl Icahn, and the impact of that plan on future operations. Quite frankly, I can understand why employee groups are very much concerned with Mr. Icahn's privatization plan.

Hopefully, this hearing will sort out answers to the intricacies of Mr. Icahn's plan. At any rate, I again commend our witnesses for being here today, and to paraphrase a current TWA advertisement, we are going to find out how good they really are.

Thank you, Mr. Chairman, and again, congratulations for calling this hearing.

Mr. **OBERSTAR**. Thank you, Mr. Chairman.

The Chair is also very pleased that we have with us the ranking member of the full committee, Mr. Hammerschmidt, who has likewise given a great deal of his service in Congress and on this committee to aviation. We are honored to have him with us this morning.

The gentleman from Arkansas, Mr. Hammerschmidt.

Mr. **HAMMERSCHMIDT**. Thank you very much, Mr. Chairman.

I want to join the chairman of the full committee in welcoming our witnesses, and I am very pleased to be able to join with you, Chairman Oberstar, and the subcommittee's ranking Republican member, Bill Clinger of Pennsylvania, as the Subcommittee on Investigation and Oversight examines the proposed plan of Mr. Carl Icahn to take Trans World Airlines private.

We are also interested in the Department of Transportation's role in examining the August 31, 1988 petition filed by the Independent Federation of Flight Attendants seeking a continuing fitness review of TWA. Of course, this is a single event which has precipitated today's hearing.

The airline has responded, disputing both the IFFA allegations and the department's authority to conduct such a review under existing circumstances. The Consumer Federation of America has also filed an answer supporting the IFFA petition. I think it is only fair to caution those who might feel otherwise that this hearing will not be the determinant of who is right. By law, that responsibility rests with the Department of Transportation.

This subcommittee's long-standing oversight of the air carrier certification process has prompted vast improvement in the administrative procedures employed by both the department and the FAA in air carrier certification actions. I would hope that today's hearing is not viewed as an attempt to preempt that greatly strengthened DOT role. Instead, Mr. Chairman, I understand that the nature of today's inquiry is to elicit from TWA officials their intentions for continued operation of TWA after the merger takes effect.

Certainly, at least to this Member, a clear understanding can not be gained from a mere review of the allegations and answers of the competing parties, nor from the various filings with the Securities and Exchange Commission. It is certainly within the purview of this subcommittee to ask questions about Mr. Icahn's intentions and the impact on a major air carrier's ability to continue to provide safe, efficient and reliable air service.

Today's hearing also provides the opportunity for the Department of Transportation to review with the subcommittee the extent of its powers and responsibilities under Sections 401 and 408 of the Federal Aviation Act of 1958. While deregulation was designed to take certain airline operations outside the scope of departmental scrutiny, it is apparent from their pleadings in this case that the IFFA and TWA do not agree on just how far deregulation was intended to go. I will be interested in hearing from the department just how it construes its authority under the act, including its powers to grant the rather extraordinary remedies requested by the flight attendants in their petition. From all indications, this case presents an exceptional circumstance, outside those that normally trigger a continuing fitness review. For that reason, the subcommittee's oversight is particularly appropriate.

In conclusion, Mr. Chairman, I merely want to reiterate my cautionary note. The subcommittee is not the ultimate arbiter of the TWA privatization and continuing fitness review dispute. While I anticipate that today's hearing will generate a great deal of information, we want to be sure to recognize that the determination to be made in this case is DOT's, and not ours. With that observation, it is my hope that today's session will be a productive one.

Thank you very much, Mr. Chairman.

Mr. OBERSTAR. Thank you, Mr. Hammerschmidt.

Of course, it is manifestly clear that the decision on what to do with respect to the petitions filed is an executive branch decision, not a legislative branch decision.

The Chair recognizes the gentleman from Pennsylvania, Mr. Clinger, who has been a stalwart throughout this year.

This will be one of our last hearings this year, and I want to take this opportunity to compliment my colleague from Pennsylvania for the persistence and time that he has devoted to this subcommittee—endless hours that we spend beyond those hours spent in this room, in preparation for our hearings. The gentleman from Pennsylvania has been a sound, thoughtful, supportive and encouraging partner in this oversight process. The Chair is very grateful.

Mr. Clinger?

Mr. CLINGER. Thank you very much, Mr. Chairman. It has indeed been a very genuine pleasure to work with you for the past 2 years on some very significant matters that this subcommittee has explored. I applaud your leadership for the last 2 years and the good work that the committee has accomplished.

The subcommittee meets today to continue its long-standing oversight of the Department of Transportation's commercial air carrier certification authorities, contained in the Federal Aviation Act of 1958 as amended. Today's hearing, however, brings a new twist.

While previous hearings have focused upon documented unsafe carrier operations, as in the cases of Galaxy Airlines and Ryan Air today we examine the question of the prospective fitness of one carrier, Trans World Airlines, based solely upon changes in ownership structure. There is an element of conjecture here which makes our task more difficult and any conclusions reached, more tentative.

Compounding the difficulty and sensitivity of today's action is the fact that a petition requesting DOT to conduct a continuing fitness review of TWA has been filed by the Independent Federation of Flight Attendants with the department, where it is currently pending. It is no secret that the petition has in large part spawned this inquiry, but I would caution those who would conclude that this subcommittee's inquiry in any way validates the allegations contained therein. Considering the allegations raised in the IFFA petition, it strikes me that the most appropriate subcommittee role is an examination of Mr. Icahn's intentions regarding the continued operation of TWA as a commercial airline, and the role of the department in the review and approval of complex corporate restructuring as a condition of continued certificated operations.

In its petition, the IFFA has alleged that the so-called privatization or merger of Trans World Airlines will, in essence, result in further enrichment of Carl Icahn and leave nothing more than an empty corporate shell under which the continued operations of the airline would be severely compromised. In its answer to the petition, TWA has challenged the jurisdiction of the department to undertake such a determination, based upon their own interpretations of the 1958 act, and has suggested that the IFFA petition is little more than a device designed to further extend the labor/management difficulties which have characterized the flight attendants' relations with Carl Icahn since he took over TWA in 1985.

Balance sheets, financial statements, and other economic analyses comprise the majority of the supporting documentation furnished by each side in the DOT proceeding, and while of considerable significance to the department's ultimate determination of

TWA's continuing ability to operate as a financially sound air carrier, I believe that a detailed examination of these documents is not the type of inquiry which this subcommittee is particularly well-qualified to engage in. What we can do, however, is seek to gain a better understanding of Mr. Icahn's intentions regarding TWA's continued operations after a merger, including fleet modernization, the maintenance or expansion of existing service, and its ability to meet long-term obligations based upon operating income projections.

We can also learn something of the Department of Transportation's current policy regarding Federal oversight of this type of transaction. For example, absent any reliable indicator of reduced maintenance expenditures and repeated violations of the Federal Aviation Regulations, what changes in corporate management or structure are sufficient reason for the department to undertake, of its own volition, a continuing fitness inquiry? Does the department have the statutory authority to grant the types of relief asked for in the IFFA petition?

Mr. Chairman, today's hearing provides us the opportunity to gain a better understanding of these and related matters. I would hope that the witnesses would be forthcoming and candid in response to our inquiries, and with their help, I look forward to a productive day's session. Thank you.

Mr. OBERSTAR. I thank the gentleman for a very comprehensive statement of the case, the issue, and the focus of this hearing.

Are there members on the Chair's right who desire to make an opening statement?

Mr. Bosco?

Mr. BOSCO. Thank you, Mr. Chairman. I appreciate your willingness to allow me to join you today even though I am not a member of this subcommittee. I have been on the Aviation Subcommittee since I came to Congress about six years ago.

I think it is safe to say that deregulation has brought both exhilaration and disappointment. The exhilaration comes in the fact that so many more Americans are able to fly now—some 480 million people last year, with increases of 10 percent every year for the past three years. People that once would have packed into a station wagon or taken the bus, are now flying, and that is a good thing which has helped our country.

I think that the disappointment has come because we have had more labor strife than ever before. Although Congress intended to protect labor, in this excitement that has occurred since deregulation, it appears that the working people may really have been left out in the cold. Maybe we could have been more careful in writing the deregulation act, in retrospect. I do think it is important, as Mr. Clinger alluded to, that here we are focusing on one airline, and as much as the information will be important, we want to be careful that we do not create an impression on the public that for some reason this is an investigation or that it is instigated by any particular lack of safety. I think that those are things which have to be proven, because we want to keep the public's confidence in air travel, in general, and in all of our airlines.

This particular airline, Trans World Airlines, has a reputation for safety. It is, I believe, one of the safest of all of the operating carriers. It is not an airline that was in good financial health when taken over by Carl Icahn. In fact, a case could rather easily be made that it is better off now than it has ever been before. I think that our role should be to see what steps are going to be taken to establish a good solid record, so that in the future we can compare what is said today with what is actually done, with the goal toward providing that all-important safety that the American public expects.

I look forward to the hearing today, Mr. Chairman, and I again thank you for holding it.

Mr. OBERSTAR. Thank the gentleman for those remarks.

Let me again underscore that the purpose of our hearing is not to question safety. There is no question raised about the safety here. The purpose of the hearing, again, is to have on the record the financial condition of this carrier and part of the fitness procedure, and also to establish the policy and procedure of the department in a one-of-its-kind transaction, so that we have some guideposts for the future.

The Chair recognizes the gentleman from Pennsylvania, Mr. Shuster.

Mr. SHUSTER. Thank you very much, Mr. Chairman. I certainly appreciate you recognizing me. I want to express my concern about this hearing, Mr. Chairman, certainly in no way reflecting upon either you or the ranking member, Mr. Clinger, because as you well know, I hold both of you in the highest regard. Rather, my concern stems not from actions of this subcommittee, but from allegations that I have received and pressures that have been brought to bear on this subcommittee, allegedly by people who have very, very personal interests in this subject, and who I think are transparently not interested in questions relating to the public good, but rather to their own legitimate private interests. I understand that allegations have been made that pressures have been brought on this committee by the Flight Attendants Union, and it is no secret that this union is locked in a bitter dispute with TWA. I do not think that it is proper that people try to use this committee as a weapon in that kind of dispute.

Further, and of even greater concern to me, are allegations that Texaco, which has been locked in a bitter dispute with Carl Icahn, has attempted to use this hearing as a weapon against Mr. Icahn, and I think that is wrong. In fact, I am told that Barron's Magazine indicates that Dr. Nancy Needham of Polytechnic Institute, who has provided exhibits for the IFFA's recent petition to the Department of Transportation, actually was on the payroll of Texaco in analyzing and helping Texaco prepare its arguments against Carl Icahn. If these allegations have substance—and some of this evidence seems to be in the public domain—then I think there is a taint here. This is certainly not in terms of our committee, because I know that we are going to be objective and fair, but it is in terms of people who, in the name of the public interest, are attempting to use us as a weapon.

I am further told that pressures were brought to bear on our committee to subpoena Mr. Icahn. I salute the leadership of the committee for not succumbing to those pressures. It would be a terrible misuse of our subpoena powers. The Congress subpoenas people when we believe that there may be evidence of criminal wrongdoing. To attempt to use the power of the subpoena in a corporate struggle, to in effect be used to bludgeon one side, certainly in my judgment, if the allegation is true, would be very, very unfair, and I salute you and the committee for not succumbing to those pressures.

Lastly, I would emphasize and note that when we had the TWA/Icahn question before our Aviation Subcommittee, on which I also serve, I must confess that I went to those hearings viscerally antagonistic toward Carl Icahn. But after three days of hearings and listening to TWA management and Mr. Icahn, I came to the conclusion that the man made sense, and indeed, the real test would be in the promises that he made to us that he was not in it simply to raid TWA, but rather to turn the company around and make it profitable. Of course, as we all know, the record is clear—that is what he did. For us to become involved in a corporate decision, where stockholders are making a decision about what to do with their stock, and where there are obviously very keen special interests involved, it just seems to me that we should be very careful that we understand the undercurrents occurring here. That is why I take this time, Mr. Chairman, to get the undercurrents right out on the table where I believe they ought to be. Then, as we proceed, we will keep our objectivity and note most of all, as Congressman Hammerschmidt has noted, that it is not this committee which has the responsibility for making the decision on TWA, but rather, if there is any governmental body to make that decision, it is the Department of Transportation.

Thank you.

Mr. OBERSTAR. I thank the gentleman for the statement and for underscoring issues that are very clear. There is no question that there are many parties of interest to this issue, but as the Chair stated at the outset, this is a very unusual transaction and there is not precedent. It is a time to take a look at it, just as the Aviation Subcommittee did two years ago on the matter that the gentleman referred to. Our purpose here is to establish a bench mark, to get the facts on the table, on the public record before this Subcommittee and before the full Committee on Public Works and Transportation. Our responsibility is not to guide, direct, or interfere with the decision-making process, but to know what its implications are so that we can judge future progress in other similar transactions.

The Chair recognizes and welcomes to the subcommittee the gentleman from Oklahoma. Does he wish to make a statement at this time?

Mr. INHOFE. Mr. Chairman, let me first of all thank you for your very generous treatment of those of us who are not on your subcommittee. I am a member of the Committee on Public Works and Transportation and of the Aviation Subcommittee. Having had a background of more than 30 years in aviation, personally, I take an interest in anything such as this, even if it is not in a subcommittee on which I sit, because I have a feeling that if this were to continue, it would eventually at least partially, be addressed by the Aviation Subcommittee.

Let me share a couple of very brief concerns that I have. No. 1: in the short period of time that I have been in Congress and have sat on the Aviation Subcommittee, there have been a couple of times when matters were brought before the committee that, to my way of thinking, were more labor/management types of issues, with which government should not be dealing. Number two, and of a far greater concern to me: certainly in a subliminal way, there is an insinuation that there could be an impaired safety factor here. This has happened in other areas, of course. When someone is trying to get attention for their cause, they will make this allegation, in a subliminal way. While you have stated your position as chairman of this very fine committee, you still have to keep in mind that the media out there could take something like this and do a great disservice to aviation in general by making people think something is true which is not true, in the case of safety, particularly when you are dealing with an airline that has one of the best safety records in the industry.

For that reason, I am very concerned, and I appreciate your tolerance, Mr. Chairman, in allowing me to sit through your discussion on this very important matter.

Mr. OBERSTAR. The Chair wishes to restate the point made in the opening remarks that there is no question of safety. Our purpose is to look into the policy of the department and the circumstances of the transaction and to ascertain the relationship between economics and operation of the airline, which has been a matter of continuing inquiry by this subcommittee in a number of other circumstances.

I fully appreciate the gentleman's concern, and we have tried to delineate the issues here so that there will be no inferences or implications that the subcommittee is raising any question about peripheral matters to the central point of this inquiry today.

The gentleman from Georgia, Mr. Lewis.

Mr. LEWIS. Thank you very much, Mr. Chairman. This is my first meeting with this subcommittee, and I am honored and delighted to serve here. I look forward to working with you and other members of the committee.

Since this is my first meeting, I will listen and learn this morning. Thank you.

Mr. OBERSTAR. We welcome the gentleman from Georgia to the subcommittee as a result of new assignments on the Committee on Public Works and Transportation. We are very happy to have not only an able listener, but a very able thinker.

Gentleman from Illinois, Mr. Gray.

Mr. GRAY. Thank you, Mr. Chairman. I want to applaud you for holding this hearing. I think you are right on target. We do not judge a child by what he says in the cloak room, but we judge him by what he does on his examination papers after studying. My district runs up to St. Louis on the Illinois side of the river, and I have watched Mr. Icahn since he acquired TWA. These hearings really ought to be held at Lambert Field if you want to hear the complaints about Mr. Icahn.

The first thing that he did was to gulp up Ozark Airlines to become a monopoly. He now has a hub, with 52 gates on one concourse which is over a mile long with old people and those in wheelchairs and such trying to get up into the last gate to take off. He has had a callous disregard for the Congress of the United

States. We used to have what we called Government fares going out to St. Louis, but now he charges the Government riders the same price as everybody else. I was home last weekend and paid $660 round-trip to St. Louis. I can fly to Rome, Paris or Frankfurt on TWA cheaper than I can leave Washington to go to St. Louis and back.

What we have here is a trend, and it is a trend in the wrong direction. The last 15 flights that I have taken into St. Louis have been delayed for a total of 17 hours. I would recommend that you call the senior Senator from Missouri, John Danforth. He and I were on a flight where we waited almost an hour after we landed before we could even get a gate.

So these hearings are very much on target, and if he goes to privatization, I predict that you are going to see a lot of safety problems in addition to the service problems. I salute you for having this hearing.

Mr. **Oberstar**. Thank the gentleman for his remarks.

The gentleman from New York, Mr. Molinari.

Mr. **Molinari**. I have no opening statement, Mr. Chairman.

Mr. **Oberstar**. The Chair will now call our first panel to come forward. We have Captain Thomas Ashwood, chairman of the TWA Master Executive Council of the Airline Pilots Association; Mr. Tim Connolly of the International Association of Machinists; Ms. Vickie Frankovich, the president of the Independent Federation of Flight Attendants; Dr. Nancy Needham, an economist; and Mr. Edmund DuPont.

[Witnesses sworn.]

Mr. **Oberstar**. The Chair would like to point out that this panel will be followed by representatives of TWA and by a third panel led by Mr. Greg Dole, Assistant Secretary for Policy and International Affairs for the Department of Transportation. We will hear all views on this matter as fully and completely as we possibly can in the time allotted today.

The Chair would like to begin with Captain Ashwood of the Air Line Pilots Association.

You may proceed as you wish, Captain Ashwood.

TESTIMONY OF CAPT. THOMAS ASHWOOD, CHAIRMAN, TWA MASTER EXECUTIVE COUNCIL, AIR LINE PILOTS ASSOCIATION, ACCOMPANIED BY CAPT. WILLIAM F. COMPTON, AIR LINE PILOTS ASSOCIATION; VICKIE FRANKOVICH, PRESIDENT, INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS, ACCOMPANIED BY MICHAEL D. BARNES, ESQ., ON BEHALF OF IFFA; EDMUND R. DuPONT, PRINCIPAL, E.R. DuPONT AND ASSOCIATES; DR. NANCY J. NEEDHAM, INDUSTRY PROFESSOR OF MANAGEMENT, POLYTECHNIC UNIVERSITY; AND TIMOTHY CONNOLLY, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, ACCOMPANIED BY JOSEPH GUERRIERI, JR., ESQ., IAM

Mr. **Ashwood**. Mr. Chairman and distinguished Congressmen, I am Captain Tom Ashwood, Chairman of the TWA Master Executive Council. Thank you for allowing me to be here today to speak on behalf of the 3,200 pilots at Trans World Airlines about Carl

Icahn's plans, which would radically change the financial structure of Trans World Airlines.

With the Chair's permission, I would like to submit our prepared copy of the report into the record, and then just speak to the substance of it.

I think it is very important to point out at the beginning of my testimony that the pilots of Trans World Airlines are not, I repeat, not engaged in any industrial negotiation, contract negotiations, or bargaining agreements with TWA at this time. In fact, our current collective bargaining agreement runs through 1992, so we have no industrial motivation behind the things that we say and do in this particular regard.

Three years ago, the House Subcommittee on Aviation, as many of the members of this committee have referred to, held hearings to investigate indeed whether Mr. Icahn's planned takeover of TWA was in the public interest. Indeed, we believe that is a question that is properly before this particular subcommittee. In addition, the then current management of TWA asked the Department of Transportation to inquire into whether TWA would remain fit if Mr. Icahn took control. That is the main substance of our appearance before this committee and our involvement in the request for these hearings.

At that time, Mr. Icahn testified that he intended to strengthen TWA, that he intended to make it profitable, and that he intended to make it an efficient carrier, which would offer better service to the public. I think we have heard from the Member from Illinois exactly how he has managed to keep that promise.

Mr. Icahn testified that he was going to improve TWA's long-term profitability and its strength. He testified again that he would bring new management skills to TWA, making it a strong and a growing airline. Relying on Mr. Icahn's testimony and promises, the subcommittee and the department determined that no action against Mr. Icahn's proposed takeover was necessary. Unfortunately, Mr. Icahn's proposed restructuring of TWA, for his own benefit, belies his earlier testimony before that subcommittee.

Congress was not alone in being taken in by Mr. Icahn and his promises. In August of 1985 the Air Line Pilots Association, of which I am an officer, entered into an agreement with Mr. Icahn based upon similar promises. The TWA pilots gave up more than $100 million per year in pay concessions in reliance on Mr. Icahn's promises that he was not going to sell off the airline's assets for a quick profit. Now I know that you are used to dealing with large telephone number figures in Congress, but $100 million per year to a pilot group of 3,200 people is a very significant amount of money, and it is a continuing amount of money year after year. We gave up more than $100 million per year in pay concessions because of those promises—and they are promises that have not been kept. At the time, Mr. Icahn told the TWA pilots that he intended to run the carrier as a profit-making enterprise. He said that he would make the capital expenditures that were absolutely necessary in order to make TWA a viable competitor in the deregulated industry.

Our trust in Mr. Icahn's promises was obviously very strong, because we gave up a heck of a lot in exchange for them. But it seems that our reliance on his word was misplaced. He is well on his way to carrying out a plan to take TWA private and to strip it of its liquid assets. If this plan is carried out, Mr. Icahn will have $665 million in cash and securities, while TWA will have a negative net worth. We will have an infinite debt/equity ratio and interest payments that can not be paid out of operating income. This is based upon the company's own most optimistic projections for the next three years.

I believe that the financial restructuring will eliminate TWA as a significant competitor in the airline industry. TWA's declining market share since Mr. Icahn took over is undisputable proof that Mr. Icahn's management has not resulted in a stronger airlines. Moreover, Mr. Icahn's restructuring is proof that he has lost any interest in running an airline. That lack of interest, together with his plan to remove TWA's liquid assets and use them in other pursuits that appeal to him, signals to us the beginning of a possibly irreversible tailspin into bankruptcy.

I believe that Mr. Icahn's plans pose a significant threat to the economic welfare of consumers. Lest I seem to be exaggerating, let me explain precisely what Mr. Icahn intends to do. I am not sure that I can explain to you precisely, in fact, what Mr. Icahn intends to do, because the convoluted, byzantine structure of companies, corporations, and financial transfers between those companies is almost inexplicable. I will try to do it as best I can.

Using his own words from a filing that he submitted with the Securities and Exchange Committee—there is to be a merger agreement among TWA, three partnerships affiliated with Mr. Icahn, known as the Icahn Entities, and the TWA Acquisition, Inc., which is the Merger Sub. The Merger Sub, which is a shell corporation, is wholly owned by the Icahn Entities.

Before the merger is complete, the Icahn Entities will form a new corporation called Holding, Inc. Holding will be given shares of TWA common stock owned by the Icahn Entities, as well as all of the shares of Merger Sub. When the merger occurs, the public shareholders will have to give up their shares of TWA common stock—there will no publicly held common stock—in return they get $20 cash and a $30 face value junk-bond. They are not called junk-bonds for any other reason than that they are junk. I should note that the market has very little confidence in the new TWA, since it is valuing those $30 junk bonds at around $15. Paying the public shareholders $20 per share for their common stock will cost TWA $141 million. In addition, TWA will have an additional $212 million in subordinated debt.

Contrast this treatment of the public shareholders with what Mr. Icahn will receive in the merger. He is on the other side of this equation. Holding, which is one of the entities, will receive $20 in cash or marketable securities for each share of TWA common stock owned by Icahn Entities. This will cost TWA $469 million. He is buying out his own shares with TWA money. But Mr. Icahn does not stop there. He will also receive a new class of TWA preferred stock. This is a special type of preferred stock, because it has full voting rights. This special preferred stock will have a market value of $196 million. Still that is not all that Mr. Icahn will receive. In addition to the $665 million in cash and securities, Mr. Icahn will also receive back the same number of shares of TWA that he controlled before the merger.

In a transaction where Mr. Icahn will take $665 million out of TWA and contribute nothing—not one dime—he will wind up with complete control of TWA. The net result of this massive payment to Mr. Icahn by an already troubled airline is very disturbing to TWA pilots. We have spent our careers making this airline work. TWA pilots have given up over $100 million per year to help Mr. Icahn carry through on his promises to make TWA a stronger and more profitable airline. Now, based on TWA's own statements and their own submissions, they show that the airline will be in serious trouble if Mr. Icahn is not stopped in his privatization plans.

TWA's proxy statement shows that there has recently been a significant increase in TWA's historically high debt-to-equity ratio. The proxy statement shows that in connection with a proposed financial restructuring in 1987, the company incurred a debt of approximately $798 million. The proxy states that TWA will be incurring an additional $243 million in debt. All you see coming into the company is debt and more debt—no capital acquisition, no funds—just more debt.

The proxy statement shows some of the effects of this additional burden of debt. It reveals that if the merger had been completed as of April 1, 1988, TWA would have had long-term and capital lease obligations of about $2.5 billion. There would have been a $14.5 million deficit in shareholders' equity.

Interest expenses would have increased to approximately $467 million per year. TWA admits that these increased interest expenses could not be met out of current cash flow, and that the airline might have to dispose of assets to meet its interest obligations. Thus, if there is any economic downturn—terrorist attack overseas against a U.S. carrier, fuel prices going up just a couple of cents per gallon—it could force a bankruptcy leading to the dismantling of TWA.

TWA also admits that its cash flow is not expected to be sufficient to repay the principal amounts of its increasing-rate notes, fixed-rate notes, and other notes at maturity. These added interests in debt costs alone will leave TWA in a financially unsound state. But Mr. Icahn does not intend to leave TWA alone as long as there are any assets left that he can transfer to his own companies and his own pockets.

The proxy statement refers to yet another massive transfer of TWA's assets which could adversely affect TWA's viability and its very existence. Mr. Icahn apparently contemplates at some unspecified time, transferring TWA's valuable stock, including its stock in Texaco and USX, which I heard some reference to earlier, into a new Icahn-owned holding company. Mr. Icahn has already transferred a large amount of Texaco stock to one of his many corporations. He may transfer more of that stock to himself as part of the $469 million that he also receives when the merger is completed.

You can imagine how difficult it is for us to be unwinding this structure of corporations. One of my staffers moved to comment that he is going to wake up one morning and find that he is raiding one of his own companies, because there are so many of them and they are so obscure.

It appears to me that whatever Texaco and USX stock is left after the merger will soon be transferred to a new holding company. In exchange, TWA will receive—such a deal—nonmarketable stock, with an unassessable value in that new company. This proposal, if it is implemented, will complete the wholesale transfer of the most significant portion of TWA's liquid assets from the carrier to other Icahn-controlled entities.

This Texaco stock that I am referring to was paid for by debt, borrowed using TWA's assets, debt that could have been used to upgrade TWA's aging fleet of aircraft. We have the oldest airline fleet in the industry, and outside of a few third-world nations, we probably have the oldest fleet in the world. This money used to pay the interest on that debt came from TWA's operating income, money that could have been used to strengthen TWA, as per his promises to this Congress and to his employees. But although TWA paid the cost of Mr. Icahn's speculations in stock, it will not reap any of the rewards, because it will not benefit from those speculations.

If Mr. Icahn carries out his plan to distribute TWA's assets to himself and his companies, which is himself again, without making the commitments necessary to maintain TWA's competitive status, the carrier's ability to operate in the future will be irreversibly damaged.

The harm to consumers will be enormous. Consumers are among TWA's largest creditors. According to the Consumers Federation of America, a highly respected group, over the last year, consumers held unsecured obligations to TWA ranging from one-quarter to one-half billion dollars in the form of prepaid unused tickets. They also hold millions of dollars worth of frequent flyer travel rights. Due to the individual nature of their claims, however, these consumers are particularly vulnerable, as you know, to TWA cut-backs in service or to bankruptcy. They are way at the end of the line, as you know.

TWA's demise, which could come about as a result of these manipulations, would pose a threat to consumers in a broader sense as well. We currently have in the United States eight airline groups providing more than 90 percent of the industry's available seat miles. That is only eight carriers. Even some of the most ardent proponents of airline deregulation, such as Alfred Kahn, then chairman of the CAB back in 1978, have become concerned since then about the concentration of the airline industry. Congress and the Department of Transportation should not stand by while one of those essential eight airlines is decimated by a corporate raider whose primary interest appears to be in draining its assets for his use in his private speculative ventures.

I would like to say something briefly about something that is very dear to the heart of airline pilots, and I am an airline pilot. Our world, my world, when I am not representing pilots in this sub-role as a union representative, is airplanes. Every day we climb into the cockpits of airplanes and we fly them. That is my office and my members' office. It is also their home for much of the time, because we spend hour after hour in those confined spaces. They are the basis of our careers. Because of what we are doing in those planes on a daily basis, we know, we can see, we can feel, and we can experience exactly what Mr. Icahn is doing to the TWA fleet and to its service. He is letting it grow old and he is not replacing aging aircraft. He is not buying new airplanes.

For 3 years, we have heard Mr. Icahn talk about studies and plans and examination of the possibility of major equipment purchases. But we can not fly studies. We can not fly plans. It does not take much study to know that every other airline, including Pan American, which is as much of a financial basket case as TWA, is spending hundreds of millions of dollars on new aircraft. In fact, in some cases on single airlines, they are spending billions of dollars on new equipment. There is something seriously wrong when TWA refuses to spend a dollar buying new aircraft.

I do not believe that Mr. Icahn ever intended, nor does he intend, to buy new airplanes. No matter how long or hard he studies the issue, buying new planes will cost TWA money, and Mr. Icahn believes that he has better things to do with TWA's money.

As a pilot and as a representative of over 3,200 pilots, that seriously disturbs me. An airline can only survive if it grows—it will not survive if it can not grow. It can not survive without modern aircraft, and modern technology has surpassed everything that we are flying in our fleet today, with the exception of the 767 and the MD-80.

Do not misunderstand me. I want to make this clear, too, as some of the members of this committee have already done. The aircraft that we are flying today are not unsafe. I fly TWA aircraft, and I fly on TWA aircraft, and I am too well-experienced a pilot to fly on an unsafe aircraft. TWA pilots would not fly them either, unless they were totally safe.

I hear some questions raised about whether or not this committee should be examining this problem. I can only tell you that there are questions. I am not asking you to accept everything that I say to you as gospel, although I think that I can substantiate anything I have said thus far. But if there are questions—and there are questions about a common carrier that holds a government certificate of operation—then those questions should be examined. They should be studied, and the people to do that are the Department of Transportation. Our indications thus far have shown not exactly an overwhelming interest in this by Mr. Burnley, Secretary of Transportation. We see that as a responsibility and duty of that department of government to make sure that we, the pilots, the other employees, the traveling public, and investors in our corporation should be afforded the protection that was established to do those very things. Our appearance before you is not intended to have you solve the problem that exists between the TWA pilots and Mr. Icahn, because as a number of you pointed out, that is not your role. Our appearance before you is to ask you to use the force of Congress, which you know is considerable, to oblige the proper department, the Department of Transportation, to conduct their duty in this particular regard and to indeed hold fitness hearings to examine whether or not Mr. Icahn is fit to operate an air carrier in the U.S. air transportation system.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you, Mr. Ashwood.

We will now hear from Ms. Frankovich, President of the Independent Federation of Flight Attendants.

Ms. **Frankovich**. Mr. Chairman and members of the committee, on behalf of the TWA employees whom I represent, and the traveling public, I want to thank you very much for your concern about the future of Trans World Airlines. Before I begin my statement, I would ask that our written transcript be included in the record, and then I will proceed with a shorter oral statement.

Mr. **Oberstar**. As with all witnesses, we will include in the record your complete statement, and we would appreciate your summary.

Ms. **Frankovich**. Thank you.

I have worked for Trans World Airlines for 19 years. Mr. Icahn has only been around for 2½ years. While Mr. Icahn has claimed that TWA will still have $1 billion in assets, his privatization scheme legally entitles him to pursue publicly announced plans to extract $1.3 billion, leaving TWA with $2.6 billion in debt and a negative net worth. Mr. Icahn may regard TWA as an expendable piece on his corporate takeover game-board, but TWA's loyal employees, and the passengers we serve, deserve better treatment.

On August 30, 1988, we filed with the Department of Transportation a Petition for Emergency Relief and Complaint, which is not directed against Trans World Airlines, but instead asks for an investigation of the activities of Carl Icahn, who has revealed a plan to strip TWA of its valuable assets, leaving a debt, and allowing him to devote his attention to other pursuits. Our very carefully documented petition is based on facts obtained from TWA and Icahn group filings before the Securities and Exchange Commission and the records of the Federal Aviation Administration. With your permission, I ask that these voluminous pleadings and exhibits be incorporated, as I mentioned earlier.

Mr. **Oberstar**. The staff will receive those pleadings and filings, for inclusion in the subcommittees files.

Ms. **Frankovich**. Thank you. TWA's answer in the DOT docket—which we have also included in our materials for the sake of fairness—evades the major issues, and that is: how much money does Mr. Icahn intend to irrevocably commit to capital expenditures for new aircraft, which he promised this committee in 1985 he would continue but has not? How much of TWA's remaining assets will be used for aircraft acquisition and expanded airline operations after Mr. Icahn takes out over $1 billion of the company's cash and dividend-paying blue chip securities in other companies that could be readily converted to cash? How will TWA pay its debts when current cash flow is inadequate to service projected interest payments that will soon equal $466 million—close to a half-billion dollars a year—at an average interest rate over 17 percent, and the extent to which pressures to pump up TWA's current balance sheet are affecting safety, particularly when FAA data show a dramatic change in TWA's rate of serious accident and incidents reports since the year that Mr. Icahn took over—double the rate of the next highest carrier?

Mr. Chairman, let me emphasize that we are not here saying that TWA is currently unsafe, but we are saying—and I don't believe that an objective observer could disagree—that the DOT should carefully, look into this matter. DOT uses the FAA data for annual safety reports to Congress and in evaluating the fitness of small air carriers. If the data are reliable enough for these purposes, then they should be good enough to signal the need for a more probing safety investigation at TWA.

In response to our Petition, Mr. Icahn has offered variations on the theme that he can do whatever he wants—despite his solemn assurance to this Committee in 1985 that he understood that a certificate of public convenience and necessity carries with it certain obligation to operate as a common carrier in the public interest, particularly since TWA enjoys the economic benefits of limited government franchises to operate on many transatlantic routes.

Mr. Icahn has sought to belittle the very important issues concerning TWA's future survivability by calling this simply a labor dispute. This is not a personal vendetta for me, although I certainly can not speak for Mr. Icahn. This is not a dispute about wages. Our concern is more fundamentally, whether TWA will continue to be an employer. We are not alone. Representatives of TWA's other employees have joined in fighting Mr. Icahn's privatization plan, using the few legal weapons that are available and at our disposal. Finally, the truth of what Mr. Icahn is trying to pull off has not yet escaped the attention of the Consumer Federation of America or the financial press.

Unhappily, since time is running out, I am beginning to fear that the Department of Transportation may well be missing the point, and there is a substantial danger to the public interest here. Protecting the public interest is the job that Congress gave to the department. While TWA claims that the DOT can not or should not act, the law, I am told, is quite different.

Deregulation loosened up on the standards for entry into the airline business, but Congress added legal requirements that anyone who owns an airline must continually be financially fit, willing to devote resources to airline services, and able to provide air transport services complying with safety and economic regulations.

DOT has adopted regulations that airlines notify the department of substantial changes so that it can evaluate their effect on continuing fitness. TWA did not advise the department of its plan to substantially change its corporate structure, although in our opinion, it was legally required to do so. The DOT has full authority to investigate, and if warranted, to regulate the distribution of TWA's assets to Icahn holding companies. Days after the Airline Deregulation Act was signed, the CAB stated that it retained previous authority to regulate intercorporate relationships between an airline and its holding companies. If there was evidence that money or assets were going to be removed from the airline operations and there was a question as to whether future operations would be jeopardized, the authority to continue an airlines certificate was, in the CAB's view, unaffected by deregulation as a legal and policy matter. Adding a continuing fitness regime was the deregulatory quid pro quo for eliminating the very detailed regulation over an airline's corporate activities.

The continuing fitness regulations, which TWA is now flaunting, are theoretically designed to afford the DOT an opportunity to review major transactions that could affect the airline's future operations, including inter-corporate transfers to holding companies. Under settled legal precedent, DOT would seemingly have no choice but to act on our petition.

The problem comes when deregulation becomes a code word for turning a blind eye to the public interest. What Mr. Icahn contemplates is not profit taking—it is pillage. It utterly amazes me that the Department of Transportation might hesitate to require that TWA comply with its regulations by explaining how Mr. Icahn's plan to extract $1.3 billion from TWA in any way serves the public interest. Let me briefly review certain key financial statistics which are discussed at great length in our DOT petition and reply.

Carl Icahn's initial equity investment in TWA, which he borrowed, was $361.9 million. That is according to his most recent SEC filing. Mr. Icahn, individually, or through his myriad holding companies, as illustrated in the charts that we have here before you, has secured the legal rights to take all of the following distributions of TWA cash or equivalents, dividends, or other payments.

First, $469.9 million in cash and cash equivalents. Next, $471 million or more in remaining USX and Texaco stock. Next, $290.3 million in face value merger-preferred stock. Then, $40 million in annual stock dividends on merger preferred stock. Next, $96.5 million, paid to an Icahn company as part of a draw which can be increased up to $300 million. Finally, $21 million from a 10-year lease which TWA signed in an Icahn-owned building. The total Mr. Icahn plans to take out comes to $1.388 billion.

At the same time, Mr. Icahn will have accomplished two objectives. The Icahn companies' share of TWA common stock will have increased from 76 percent to 90 percent, without any payment for any of those increased shares. Also, as a private company, TWA will not be subject to certain securities regulations or to potential enforcement of the legal duties owed to shareholders of publicly traded TWA.

Since 1986, TWA's total property declined from $1.92 billion to $1.87 billion. Under Mr. Icahn, TWA has borrowed $1.3 billion, nearly doubling its debt, which post-privatization, will be nearly $2.6 billion. Of this amount, about $150 million was needed to help get TWA over the terrorist-induced traffic slump in 1986, and this debt has not been retired from subsequent earnings, but rolled over at a higher interest rate in order to allow Mr. Icahn to purchase stock in other companies. In short, Mr. Icahn bought stock rather than investing retained earnings and borrowed funds in the airline.

After privatization, Mr. Icahn will get the cash and the stock that was purchased from these borrowings. TWA will get to keep the debt. The annual interest payment will be $466.8 million at an average interest rate of 17.9 percent. TWA will have a negative net worth because liabilities will exceed assets. Absent even more borrowing, TWA will be unable to cover the projected $200 million shortfall between cash flow and interest and other expenses.

Still there are those who might tell you that Icahn owns TWA so he certainly has the right to do whatever he wants. But like all oversimplifications, this presumes a good-faith desire to manage the airline, to derive profits and to provide a more efficient service. Once again, I invite members of the committee to peruse our DOT pleadings to get a flavor of the financial machinations that explain

TWA's short-term "financial turnaround," at the expense of its long-term financial health and competitiveness.

In deciding public policy issues, DOT should be forced to consider not only the private ambitions of Mr. Icahn, but a far broader range of interests.

Mr. **Oberstar**. Excuse me for interrupting, but we do have a vote in progress. We will have to break in about three minutes. Let me ask if you could summarize the balance of your statement, please.

Ms. **Frankovich**. I am on my final comments, Mr. Chairman.

The only comments that I had left to make dealt with the fact that we are not alone. Mr. Icahn has attempted to imply that we are—that is not the case. There are a number of people who are unwilling contributors to the pot of money that Mr. Icahn is attempting to take out of TWA, and that includes airline passengers or contractors who are pre-paying tickets for other promotions at discount coupons, employees, including flight attendants, who have paid a total of $300 million annually in concessions since 1986, communities such as St. Louis, which depend on TWA for vital air transport, trade creditors which are currently owed $603 million, investors buying TWA junk-bonds, airports who are induced to provide public money for facilities development, and perhaps the cruelest deception of all, if in fact the Department of Transportation does not act, will be to pretend that Government regulation over air carrier fitness still exists.

In conclusion, investigation should indicate that post-privatization, TWA will not be profitable.

Thank you very much for your consideration. We are prepared to answer any questions that you may have.

Mr. **Oberstar**. Thank you.

We will now recess to vote, take Mr. Connolly's statement on our return, and then begin questioning of witnesses. The Chair will impose a five-minute rule on member questioning because of the large number of members present today.

Subcommittee will stand in recess.

[Recess.]

Mr. **Oberstar**. The subcommittee will resume its sitting.

Our next witness is Mr. Timothy Connolly for the International Association of Machinists and Aerospace Workers.

Mr. **Connolly**. Mr. Chairman and members of the subcommittee, my name is Timothy Connolly, and I am a Grand Lodge Representative of the International Association of Machinists and Aerospace Workers [IAM]. The IAM is the largest union in the airline industry, representing approximately 95,000 employees. I am assigned to assist IAM District Lodge 142, which represents employees of Trans World Airlines as well as Continental Airlines, Southwest Airlines, Air Midwest, Mexicana Airlines and others. There are approximately 15,000 IAM members represented in District 142. These employees cover a wide range of job classifications including clerical, mechanical and related, as well as service employees.

In 1985, the IAM initially and enthusiastically supported Mr. Icahn's acquisition of TWA. Indeed, the IAM and Mr. Icahn reached a historic accommodation which required IAM members to make considerable sacrifices in exchange for a commitment from Mr. Icahn to continue investment in TWA to ensure its growth and viability. Unfortunately, Mr. Icahn violated both the spirit and the letter of our agreement. It is for that reason that we are concerned that privatization of the airline may not be in the best interests of the public and TWA's employees. A case can be made that since Mr. Icahn's acquisition of TWA, he has devoted more effort and resources to his corporate raiding interests than to the operation of TWA. The IAM is fearful that the ultimate results of privatization will be to jeopardize TWA's financial structure and result in the elimination of IAM jobs.

IAM members gave up $150 million in wage and benefit concessions to allow Mr. Icahn to take control of TWA. At the time, we believed his representations to us that he intended to run the airline and expand its position in the airline industry as a modern, up-to-date entity. However, we have been repeatedly disappointed.

There is now evidence that Mr. Icahn is redeploying assets that he promised to keep within TWA. To further this end of gaining total control of the company while recovering his investment, Mr. Icahn has begun disposing of crucial assets, including aircraft, through sale and sale leaseback arrangements. At the very least, such substantial reduction of TWA assets causes the carrier to lose revenue and profits and prevents its growth in the industry.

The IAM greatly fears that if the privatization plan is completed, TWA may well be unfit to continue as a carrier. Under the Icahn plan, TWA will have to take on an additional $1 billion at least in new and reorganized debt. Unfortunately, this borrowing will not be used for badly needed replacement of aging aircraft in one of the oldest fleets in the industry. Indeed, the average age of TWA planes has gone from the industry average of just over 12 years in 1985, before the Icahn purchase, to over 14 years currently. Privatization will increase the long-term debt of TWA to more than $2.5 billion and will drive up TWA's already high debt-to-equity ratio. TWA will be left either insolvent or so near insolvency that it will jeopardize its continued viability.

Mr. Icahn's acquisition of TWA created a highly leveraged company. However, to remain viable, TWA will have to make major capital expenditures by 1990. Indeed, Mr. Icahn promised, upon taking over the company, that he would maintain capital expenditures of at least $127 million per year. He has not done so. Moreover, the Icahn plan imposes a heavy debt burden on TWA that makes the financing of necessary capital expenditures substantially more difficult. TWA's cash flow will of necessity have been diverted to debt service. TWA will be left without even the smallest financial reserve to survive future downturns in this highly competitive and volatile airline industry. The privatization plan envisions the devouring of the company's entire equity. TWA's equity will go from $225 million to a deficit of $14.5 million, a drop of $240 million, while its debt skyrockets to over $2.5 billion.

The privatization plan also threatens the stability of labor relations at TWA. In the agreement that allowed Mr. Icahn to take control of the company, he pledged 20 percent of TWA's common stock to the TWA employees who were to make concessions. Mr. Icahn and the companies he controls agreed to limit their investment to 80 percent of TWA's outstanding common stock. Nevertheless, according to the agreement and plan of merger, Mr. Icahn intends to obtain 90 percent of the new, private TWA, leaving the employees with only 10 percent. Considering that the IAM and the Air Line Pilots Association materially assisted Mr. Icahn in restoring TWA to profitable operations, at least for a time, this unilateral change in the share allocation of the corporation is sure to have a substantial effect on already deteriorating labor management relations.

Since the takeover, and culminating in the privatization plan, Mr. Icahn's behavior has led the IAM, a one-time supporter, to reconsider its original position. It is becoming apparent that Mr. Icahn may have no intention of fulfilling promises he agreed were necessary to keep TWA a healthy airline. In light of this, the IAM has been forced to seek a recision of its $150 million wage and benefit concession package in Federal court. In addition, as of January 1, 1989, TWA will be required to snap back wages in the amount of at least $50 million a year. Accordingly, Mr. Icahn's privatization plan may well seriously jeopardize TWA's compliance with collectively bargained agreements.

Therefore, we at the IAM urge the Congress to exercise its supervisory powers to institute a public investigation to determine TWA's continuing financial fitness. The Congress should assure itself that the service and performance TWA provides in public trust as a government licensee are not lost because of Mr. Icahn's extremely risky financial maneuvers. Thank you.

Mr. **Oberstar**. The Chair notes that there are two additional persons who have joined the witnesses at the table. They are attorneys, Mr. Barnes and Mr. Guerrieri.

Do either of you have statements to make or comments? We will swear you in at this time if you do.

[Witnesses sworn.]

Mr. Barnes?

Mr. **Barnes**. Mr. Chairman, as you noted, I am an attorney with the law firm of Arent, Fox, Kintner, Plotkin & Kahn. We have represented the Independent Federation of Flight Attendants for a number of years.

The question was raised earlier by Mr. Shuster with respect to the presence here today in support of the three witnesses of Dr. Nancy Needham and Prof. Rex DuPont. Dr. Needham is Industry Professor of Management at Polytechnic University and Professor DuPont is Professor of Finance at the University of Maryland.

These two were retained by Texaco—and this is already in the record today because our testimony put it in the record—to analyze on behalf of Texaco, the rather intricate corporate structure of Mr. Icahn's holdings in the context of the proxy dispute between Mr. Icahn and Texaco. During the course of their work on behalf of Texaco, they contacted the employee organizations of TWA to obtain information. It was in that way that the flight attendants became aware of the fact that there were financial experts doing an analysis of Mr. Icahn's corporate empire. At the time that the flight attendants determined to investigate these various financial matters that are the subject of this hearing today, it was natural that they went to the people who had already spent months doing this financial analysis.

The flight attendants retained Professors Needham and DuPont to continue that work and to do that financial analysis. That is in the record of this hearing and it is in the record of the Department of Transportation. They did precisely this analysis for Texaco, and it was our judgment that we wanted to find people who had already done a thorough financial analysis. So they are now working with us. I would trust that there is no suggestion that because of that, their facts are anything other than what they are, and they should be looked at on their own merits, rather than on the question of prior service for Texaco.

Mr. OBERSTAR. Thank you very much for that clarification. Certainly Mr. Shuster will have ample opportunity for questions to the witnesses on the facts and on the authenticity of the information that they will provide.

Mr. Guerrieri, do you have a comment to make?

Mr. GUERRIERI. Mr. Chairman, only that I am pleased to have the opportunity to be here representing the International Association of Machinists. I have no further comment, but do stand ready to answer any questions that the subcommittee may have.

Mr. OBERSTAR. Mr. DuPont and Dr. Needham, do you have any amplification of the statements made up to this point?

[No response.]

Mr. OBERSTAR. All right. We will proceed with the questioning then. The first point to be made is that TWA reported record profits in 1987, a net profit of $106.2 million. In light of the airline turning its finances around and reporting record profits, how does this group question the fitness of the carrier? On the face of it, a carrier that is profitable appears to be fit in the financial sense of that term.

Captain Ashwood?

Mr. ASHWOOD. You are looking at a figure there which again is one of these smoke and mirror things. Of that $106.2 million, there was a $50 million one-time windfall from an aged Howard Hughes lawsuit.

[Discussion held off the record.]

Mr. ASHWOOD. I am sorry—I was being corrected by my numbers cruncher here, so that was the 1988 thing.

The fact of the matter is that $106 million profit, when you measure it against the fact that there was $275 million worth of concessions given by the employees in direct recompense to the company—well, I am not a mathematician or a financier—but if you remove 106 from 275, that is approximately $169 million that would have been a loss without those concessions from the employees. I do not consider that to be a turnaround for a company which finances itself out of concessions from the employees. We have watched other airlines do this to their detriment, Eastern, for example, which lived off of its employees' concessions for about seven years. We can see where that is heading right now.

In terms of showing profits, then, I would respectfully suggest that it would be like me paying the mortgage on your house, sir.

You finish up at the end of year ahead of where you thought you were going to be, but it was at my expense.

Mr. **Oberstar**. Mr. DuPont?

Mr. **DuPont**. I might add that the issue before us, which is the issue of privatization, based on TWA's own calculations of the effect of privatization on these "record profits," is that there were $50 million available for common shares after those profits as stated for 1987. If the privatization had gone through as of January 1, 1987, TWA would have shown a net negative $137 million for 1987. It is that issue that we are here to look at.

Mr. **Oberstar**. I appreciate that. What we are concerned with is the financial fitness of the carrier, which is the continuing inquiry into fitness matters. An important aspect of that, as I think you well understand, is the debt-to-equity ratio. What was the debt-to-equity ratio of TWA at the time that Mr. Icahn became the major holder in the airline, and what is it today? Further, how will privatization change debt-to-equity ratio, which is at least one yardstick by which you measure a company's ability to acquire assets and expand in order to remain financially competitive?

Mr. **Ashwood**. Mr. Chairman, could I beg the indulgence of the Chair to have Captain Bill Compton, who is here with me, sworn in, because he is the person who studied the financial aspects of TWA to a fine degree.

Mr. **Oberstar**. Captain, would you step forward and give your name and association?

Mr. **Compton**. My name is Bill Compton and I am the chairman of the Negotiating Committee for the Pilots of TWA.

[Witness sworn.]

Mr. **Oberstar**. You may proceed.

Mr. **Compton**. The debt-to-equity ratio is an interesting one. TWA had a shareholders equity of approximately $200 million when Carl Icahn came on board, and now they are advertising that they might have a negative shareholders equity of $14 million. But it is interesting how they arrive at the figure of the negative $14 million.

TWA, for the first time in its history, has put a value on its international route authorities in the amount of $375 million. They have also marked up the value of their PARS system, and the value of their marketable securities to market, rather than cost. So if, in fact, they had not done this deft bookkeeping maneuver, you would be looking more at a negative shareholders equity of approximately $400 million versus $14 million.

Mr. **Oberstar**. Your statement is, that in order to show a positive debt-to-equity position, the company has done something new in their bookkeeping, placing a value on their international route structure and adding that value in? Was that not a calculation earlier in the equation?

Mr. **Compton**. That is correct. Even after the move-up and the mark-up on the international route authorities and the PARS system and marketable securities, putting them at current market pricing versus cost, what they have done is to mark those up to get to a negative $14 million in shareholders equity. If in fact they had not marked up those issues, you would be looking at a negative shareholders equity of about $400 million.

Mr. OBERSTAR. I will have another question about that.

Dr. Needham?

Ms. NEEDHAM. To add to your original question about the debt-to-equity ratio, in 1985 the debt-to-equity ratio was 2.4 and now it is about eight. After privatization, you basically will not be able to measure it because there will not be any equity.

Mr. OBERSTAR. Why will there not be equity after privatization?

Ms. NEEDHAM. Because the liabilities exceed the assets, and equity or net worth of a company is the difference between what you own, your assets, and what you owe, your liabilities. So if you owe more than you own, you do not have any equity.

Mr. OBERSTAR. Captain Compton, you said that they have given a value to the routes, but did not that value exist at the time that TWA was acquired by Mr. Icahn?

Mr. COMPTON. Sure, there is a value to the international routes, but to the best of my knowledge, airlines do not normally put that on a balance sheet.

Mr. OBERSTAR. And your contention is that it was never previously broken out of the total company evaluation?

Mr. COMPTON. To the best of my knowledge, that is correct.

Mr. OBERSTAR. Thank you.

The Chair will now recognize the chairman of the full committee, Mr. Anderson.

Mr. ANDERSON. Thank you, Mr. Chairman.

My first question is, can any of you comment on the financial position of ACF Industries, which Mr. Buckstein's testimony describes as thriving?

Mr. DUPONT. Yes sir, we can. The history of ACF is useful to look at here as an example. When Carl Icahn acquired it, he sold off three of the divisions, which was enough to recoup his stake in the company. As of June, ACF had $1.171 billion in debt and $65 million in equity. In the first two quarters of this year, interest charges amounted to between 70 and 80 percent of ACF's revenue, according to their own financial statements. I would like to add that over the last nine months, it also appears that ACF has been failing to meet the earning standards required by the contracts backing its debt.

Mr. ANDERSON. In your judgment, how has Carl Icahn fulfilled any of the commitments that he made to this committee or the Department of Transportation in 1985 when he was seeking government support for his takeover? First, has he continued to acquire new aircraft at the same rate as prior owners? Has he kept TWA's debt at the same level that it was when he acquired TWA, as he told this committee that he would, and has Mr. Icahn sold off any TWA assets since he told us in 1985 that he would not do so?

Mr. ASHWOOD. If I may answer the question about the aircraft. Icahn claims that he bought aircraft for TWA when he bought Ozark Airlines. He bought 50 older aircraft, which he immediately mortgaged to the hilt, thereby recouping his entire Ozark investment. But if you exclude the Ozark aircraft, TWA's fleet has grown by 15 aircraft over the past 3 years. We are the only major U.S. carrier without any planes on order. Delta has 215 aircraft on order. U.S. Air has approximately 120. American has more than

100 aircraft on order, but we have zero, zip, none. Fifteen over a period of 3 years is insignificant.

Mr. **Anderson**. Has he kept TWA's debt at the same level as he said that he would?

Mr. **Ashwood**. Absolutely not. It is just so far out of kilter that it staggers my mind, although they claim in a company-submitted document, that the debt-to-equity ratio alone does not indicate a company's financial strength. One would have to be extremely naive to accept that as being true.

Mr. **Anderson**. And has he sold off any TWA assets since he told us in 1985 that he would not do so?

Mr. **Ashwood**. A significant portion of its assets is in its reservation system, which has the acronym PARS, and he has sold off 50 percent of that as of this date.

Ms. **Needham**. May I add that the long-term debt at TWA in 1985 was $1.314 billion. The first half of 1988, it was reported at $2.346 billion.

Mr. **Anderson**. It is about double then?

Ms. **Needham**. Yes, plus there is a redeemable preferred of $240 million, redeemable preferred which was not there in 1985.

Mr. **Ashwood**. May I also add, in terms of his stewardship of this airline, under Icahn, TWA's market share has fallen to 14.5 percent of transatlantic passengers, from 20.9 percent in 1987, so we have lost 6.4 percent of our transatlantic traffic. On the domestic side, our market share has slid from 7.3 percent in 1985 to 6.4 percent in 1987. In other words, we have taken huge losses of market shares, both in our domestic and international structures. I do not know what one measures good business management by because I am not a manager, but I tell you, I know it is this.

Ms. **Needham**. I do know what you measure business management by. When you are looking at debt, the committee should be aware that after privatization, the cost of debt would be 17.9 percent, which is a little worse than I get on my Master Card.

Mr. **Anderson**. My last question is for Mr. Connolly, the IAM witness.

Mr. Connolly, do you feel that Mr. Icahn is providing adequate financial resources for TWA's necessary maintenance functions? Are you aware of any spare parts inventory shortages which might be related to Mr. Icahn's financial policies?

Mr. **Connolly**. We are not directly aware of any reduction in the spare part reserves which are kept on hand to keep the fleet maintained, but we fear that with privatization we will have no method whatsoever for monitoring just what that reserve is, what constitutes that reserve. It concerns us.

Mr. **Anderson**. So you feel that it would happen more under privatization than it has up to the present time?

Mr. **Connolly**. There would not be the accountability required with reports submitted, et cetera. We would just have to guess at it.

Mr. **Anderson**. These spare parts inventory shortages are very important to airline safety, are they not?

Mr. **Connolly**. They are developed over a long period of time, based on maintenance experience with various aircraft as to what you store and what parts are more reliable or less reliable. It is easy to assume that anybody could come in with a percentage, taking *x* amount out to see what happens.

Mr. ASHWOOD. Your question is a good one, sir, insofar as that becomes even more crucial when you consider the increasing age of this fleet and the requirements for spare parts that go with that.

Mr. ANDERSON. Thank you, Mr. Chairman.

Mr. OBERSTAR. Chairmen are not limited to 5 minutes, Mr. Chairman.

Mr. ANDERSON. Thank you.

Mr. OBERSTAR. The gentleman from Pennsylvania, Mr. Clinger?

Mr. CLINGER. Thank you very much, Mr. Chairman.

Captain Compton, to go back to something that you said a little earlier—you seemed to be suggesting that what Mr. Icahn did after acquisition, in terms of changing some of the valuations and bookkeeping practices, may have been somewhat irregular. I am advised that those kinds of changes, that is, the revaluation up to market value of securities and so forth is a fairly routine and common practice after an acquisition. Would you dispute that? Do you feel this was a unique situation or a fairly common one?

Mr. COMPTON. First, I have to tell you that I am an airline pilot, not an accountant or a financier by any means. But from my understanding, TWA has never put a value on the international routes prior to this time.

Mr. CLINGER. Why not? If they have value and they are an obvious asset to the corporation, why would they not be included on any type of balance sheet?

Mr. COMPTON. I guess you would ask an accountant or a financier that question.

Mr. CLINGER. Dr. Needham or Mr. DuPont?

Mr. DUPONT. I think this raises an issue that is central to this whole hearing. These routes constitute a Federal or international license to use something. They are not transferrable without permission. It is unclear how TWA can mark these up and then transfer the value out to Carl Icahn. He is saying that he is putting a value on a Federal license, which I think is part of the issue that we are looking at here. Is he using his license for his personal gain? This is probably the clearest single example that I can see.

Ms. NEEDHAM. An asset is something that you own or have title to, and an airline does not own its international routes. The government does, which is probably why it does not usually show up on the books as an asset.

Mr. CLINGER. What about the other changes? Isn't it fairly routine for the revaluations to go on after an acquisition of this magnitude?

Mr. DUPONT. The interesting question is: is this an acquisition? Who is acquiring whom? Icahn is turning in his shares and getting back his shares——

Mr. CLINGER. Or a merger, then?

Mr. DUPONT. If you can mark your assets up by merging with yourself, then everybody would be out doing it. There is the serious question of exactly what kind of merger this is, which I think is a fit subject for the Department of Transportation to look at.

Mr. CLINGER. I am interested in whether or not any consideration was given to pursuing this question in a less formal manner.

Did you have any contact with the Department of Transportation to see if this could be explored without the formal petition? Or, in other words, what prompted the feeling that you had to go with the formal petition right off the bat? Were you frustrated in previous conversations or discussions with the Department of Transportation?

Mr. Ashwood. Speaking for the pilots, sir, yes, we were. In fact, we did have several meetings with Mr. Icahn or his representatives, and we were frustrated in this particular regard. We approached things as we normally do in labor/management relations in a straightforward basis, but we rapidly arrived at the conclusion that we were not going to get anywhere and that we were not going to get any straight answers or any satisfaction.

Mr. Clinger. I guess what I was trying to get at was whether you had any informal contact with the Department of Transportation prior to the filing of the petition in August.

Mr. Ashwood. Speaking for the pilots, no, we did not.

Mr. Clinger. What about the flight attendants?

Ms. Frankovich. No sir, we had no direct contact with the Department of Transportation, but we likewise had the same experience that Captain Ashwood described. We approached the corporation and requested meetings. They did not agree to meet with us.

Mr. Clinger. Did you feel that the only way to pursue this was with a formal petition? Did you not feel that you could approach the department on a less formal basis to get them to respond to your concerns?

Ms. Frankovich. The reason that we filed a formal petition is because, as we understand it, the privatization is going forward at full steam ahead, and we did not have time to take more informal channels that might not have quickly arrived at a conclusion. We had to quickly get to the conclusion and to a point where we could have the formal action that would stop the privatization pending investigation.

Mr. Ashwood. I would like to also point out that we were given notice of the privatization in the minimum amount of time that the law prescribes, and we had less than 35 days to respond to documents which literally stood, I think, about 11 inches high.

Mr. Clinger. Wasn't this announced in April?

Mr. Ashwood. No sir. We received notification of the privatization meeting on August 12, and the meeting took place in early September.

Mr. Clinger. It was our understanding that the proposal was first announced in April.

Ms. Needham. In that regard, the key financial information upon which we rely in our filing was made available August 15.

Mr. Clinger. I will have further questions later, but my five minutes are up, Mr. Chairman.

Mr. Oberstar. We are right at the start of a vote, but let me recognize the gentleman from California, Mr. Bosco.

Mr. Bosco. Thank you, Mr. Chairman.

I have wanted to clear up something that perhaps Mr. Barnes can help with. I was not quite sure what Texaco's role in this is. Are you saying that although Texaco had reason to hire certain experts, some of whom are here, to do research for them, that at some point the effort became a joint one?

Mr. BARNES. No, Mr. Bosco. Texaco and Mr. Icahn were engaged in a proxy dispute. Texaco retained Professors Needham and DuPont to do an analysis of Mr. Icahn's financial holdings, including those in TWA. In the course of that investigation for Texaco, the two professors contacted the employee organizations and the employee organizations learned that there were these professors out there who were doing a thorough analysis of Mr. Icahn's financial holdings. When the flight attendants determined to do a careful review of the privatization proposal, they went to the people that they knew had already done an analysis and they retained the professors.

Mr. Bosco. But Texaco has no interest in this hearing?

Mr. BARNES. Texaco may have a continuing interest, and I am sure that they do, in Mr. Icahn's activities. However, the experts that are here today for the flight attendants and the other unions have been retained by the flights attendants. They are not here on behalf of Texaco.

Mr. Bosco. Texaco did not ask them to appear here?

Mr. BARNES. The International Federation of Flight Attendants asked them to assist us in preparing the testimony that we presented both at DOT and here. They are not here on behalf of Texaco.

Mr. Bosco. So we can lay to rest any rumor that somehow, Texaco is participating in this as a way of perhaps getting back at Mr. Icahn? We can lay that to rest, can we not?

Mr. BARNES. Certainly with respect to the participation here of Professors Needham and DuPont. I do not want to mislead you or other members of the committee with respect to Texaco's concerns about Mr. Icahn. They are continuing.

Mr. Bosco. But their concerns would presumably be different than those of our committee?

Mr. BARNES. That is correct. That is a different concern.

Mr. Bosco. I think that what we would want to be sure of is that Dr. Needham or others are not here because of prompting from Texaco, but are here rather for legitimate reasons.

Mr. BARNES. This is a very complex matter as you can see if you have had a chance to look at the charts that we have attached to the testimony and that are before you. We went out to try to find the people who could help us wend our way through this very complex financial network that Mr. Icahn has established, of which TWA is a part. We retained the services of these professors because they were already experts on this matter.

Mr. ASHWOOD. The pilots have had no contact with Texaco whatsoever.

Mr. Bosco. Apparently, $1 billion more in debt has been acquired by Mr. Icahn, according to what you stated, and yet you say that no new aircraft to speak of have been purchased, and apparently, employees have not been paid substantially more if any at all. Where did that $1 billion in debt go? Most of what you predict has not happened yet. You are predicting what may happen under privatization, but where do you believe that the $1 billion went?

Mr. ASHWOOD. I am even less of a financial expert than my colleague here, but a lot of that debt has been acquired similarly to borrowing money from the leg-breakers. They are dealing with the junk-bond market, Drexel Burnham, high costs and high finance. He has been using TWA as a vehicle to back himself in the high rolling crap games that he involves himself in. He has been using TWA, putting it up as a support for his financial dealings.

Mr. Bosco. More specifically, are you saying that none of this debt has been rerouted back to TWA for the benefit of the airline and that it has been acquired for extraneous purposes?

Mr. **Ashwood**. That is absolutely correct, sir.

Ms. **Needham**. On the TWA balance sheet, basically what happened is that there were borrowings and TWA's cash holdings have increased from $169 million in 1985 to $538 million at the end of June this year, and marketable securities, which was a nonexistent category in 1985, increased to $784 million. A new category has been added called investment in affiliates, which means monies over in other Icahn companies. That has gone up by $165 million.

Mr. Bosco. Thank you very much, Mr. Chairman.

Mr. **Oberstar**. The Chair recognizes the gentleman from Oklahoma.

Mr. **Inhofe**. First of all, I want to comment to Captain Ashwood that I appreciate very much your comments as to safety. As I said in my opening statement, I am always concerned whether someone might be using something which might falsely alarm the public when we are talking about an institution that has an excellent record. I appreciate that very much.

Dr. Needham or Mr. DuPont, as I recall—and I represent the district where the proxy fight with Texaco took place—you had at that time a financial, contractual relationship with Texaco, is that correct?

Ms. **Needham**. I had that at the proxy fight.

Mr. **Inhofe**. Then you were paid by Texaco at that time, and you had a contractual relationship. Do you have any type of relationship right now with Texaco?

Ms. **Needham**. I am hoping to get another head-hunting job from them.

Mr. **Inhofe**. But do you now?

Ms. **Needham**. I have not nailed it down yet. I met Texaco because I did a head-hunting job for them. I do some head-hunting on the side.

Mr. **Inhofe**. Yes, but my specific question——

Ms. **Needham**. The answer to your question is that I think I am going to be doing an assignment for Mr. Dowd of Texaco, but I do not have that cast in concrete.

Mr. **Inhofe**. Then that relationship is ongoing, is it not?

Ms. **Needham**. Well—I do not know if that constitutes ongoing, if it is not cast in concrete.

Mr. **Oberstar**. I think the question is: Are you now being paid by Texaco?

Ms. **Needham**. No.

Mr. **Inhofe**. You were being paid at one time, but right now you have no relationship with Texaco in terms of a contractual relationship, is that correct?

Ms. **Needham**. I have no contract with Texaco.

Mr. **Inhofe**. But you are hoping to get one?

Ms. **Needham**. I would like to get one to do head-hunting, yes.

Mr. **Inhofe**. Thank you very much.

Mr. **Oberstar**. The subcommittee will stand in recess until 1:30, and we will resume with this panel for a few more questions.

[Whereupon, at 12:30 p.m., the subcommittee recessed, to reconvene at 1:30 p.m. the same day.]

AFTERNOON SESSION

Mr. **Oberstar**. The subcommittee will resume its sitting.

The Chair apologizes for the delay necessitated by an unforeseen vote that occurred just before 1:30.

We will resume our questioning of the first panel. The Chair at this time recognizes the gentleman from Pennsylvania, Mr. Shuster.

Mr. **Shuster**. Thank you very much, Mr. Chairman. We certainly do appreciate the testimony of the panel.

First, staff tells me that if Icahn is successful in privatizing TWA, he will continue to have a $300 million investment in the company. Is that accurate?

Ms. **Needham**. I don't think it is accurate, depending on how you use the term "investment."

Mr. **Shuster**. On a stock which is fairly vast stock, or equity which is valued at fair market value of $300 million.

Ms. **Needham**. It will be private so there won't be a fair market value to the stock. Second——

Mr. **Shuster**. Wait. Hold it. Just a minute, please.

Just because stock is private does not mean that it doesn't have a fair market value. It might be much more difficult to determine what it is, but it's not zero because it's private.

Ms. **Needham**. Well, it's difficult to put a value on something that now will have a negative equity, Mr. Shuster. On TWA's June 10-Q, page 11, footnote 12(c) states that Carl Icahn's equity investment in TWA was $361.9 million. He is getting paid for that.

Mr. **Shuster**. I understand all those numbers.

Ms. **Needham**. He's getting $468.9 million——

Mr. **Shuster**. I understand all that, but he will be——

Ms. **Needham**. So how does he still retain——

Mr. **Shuster**. If I might reclaim my time, he will be the sole owner of TWA.

Ms. **Needham**. No, he will be a 90-percent owner.

Mr. **Shuster**. A 90-percent owner; right. So he will have a substantial interest in the success of TWA if it fails. If it goes bankrupt, he will have lost his position, whether it's debt or equity, in the company.

Ms. **Needham**. Well, through privatization, Mr. Shuster, he has the undisputed right by various means to extract almost four times——

Mr. **Shuster**. I understand all that. You've already testified to that. My point is that if the man owns 90 percent of the corporation, the man certainly has a vested interest in the success of the corporation.

But let me go on; my time is limited. There were charts up here—I hope they're still here in the room—which said that the structural and mechanical malfunctions of TWA are four times the industry rate.

If that's a fair, true, accurate assessment, then I believe, Mr. Chairman, we should have a very serious investigation of TWA's safety.

I don't know which one of you had the chart up—please speak up—but one of you had a chart up there that said the structural and mechanical malfunctions of TWA Airlines is four times the industry rate.

Ms. FRANKOVICH. We had that chart.

Mr. SHUSTER. Yes. If that's the case, then this must be an unsafe airline. We've had testimony here that says it is a safe airline.

Ms. FRANKOVICH. We don't find ourselves in a position to conclude that the carrier is safe or is unsafe, but our concern——

Mr. SHUSTER. So you're saying it might be safe and it might be unsafe? Is that your testimony?

Ms. FRANKOVICH. We're saying that we believe the Department of Transportation should investigate and determine what is the real fact, and the data that we're referring to is FAA data base, so it is undisputed fact.

Mr. SHUSTER. I think it's very serious, Mr. Chairman. If, indeed, this does reflect a legitimate measure of the safety record of TWA, I think there should be a major investigation, and I'm a bit mystified that the chief pilots of the pilots' union here would say that it's a safe airline.

Mr. ASHWOOD. Mr. Shuster, please don't call me a chief pilot. That's a management position at the pilots' union there.

As far as maintenance, breakdowns on aircraft, and so forth, I haven't seen these figures over here, but I would point out to you that, regardless of how many times an aircraft breaks down, our concern is that it's fixed before we fly it. So it may break down twice a day for all I know, so long as it's fixed and then we fly it once it's fixed, which supports the statement that I made this morning that TWA is safe.

I have no idea how many times the aircraft is being fixed.

Mr. SHUSTER. I'm simply making the point that—and I appreciate your testimony that you believe it's safe, but if, indeed, the structural and mechanical malfunctions of TWA are four times the industry rate, then I hope there's somebody from the Department of Transportation and the FAA in the room here today to understand that at least this Member believes that's an enormously serious statement. It requires the most intensive kind of safety investigation.

Ms. FRANKOVICH. We agree with you and hope that goes forward.

Mr. SHUSTER. And, indeed, I could not conclude that TWA is a safe airline if that's a fair statistic.

One final point: if I understood the captain to say that TWA spent nothing on new airlines, I have a staff report here that says that in 1988 TWA acquired four new MD-80 aircraft and, for the 12 months ending June 30, 11 new aircraft were added to the fleet. So I don't understand the gentleman's statement that they spent not one dollar on new aircraft when I'm informed that they have acquired 4 plus 11——

Mr. COMPTON. Mr. Shuster, I believe Captain Ashwood addressed that. He did state that TWA over the last three years has brought 15 new aircraft to the fleet.

I'd like to get back to your equity question.

Mr. SHUSTER. Well, just a minute, then. So then they have expended money? They have made a capital investment in new airlines.

Mr. COMPTON. No, I wouldn't say capital expense because I believe they are operating leases.

Mr. SHUSTER. Oh, I see.

Mr. COMPTON. Similar to renting a car from Hertz.

Mr. SHUSTER. I understand. But they have brought new aircraft into the fleet?

Mr. COMPTON. Operating leases.

Mr. SHUSTER. All right. That, I think, needs to be clarified.

Mr. COMPTON. Fifteen aircraft, that's correct.

Mr. SHUSTER. OK. You would like to add something?

Mr. COMPTON. Yes. I would like to address the equity question because I do understand that Mr. Icahn is making the argument that he's going to have $350 million in equity in TWA after privatization. I think that's the core of the problem. You have to address where's that $350 million coming from. Well, $196 million of it, approximately $200 million, is in a merger-preferred stock. Basically, that's being issued—he's got a printing press similar to the problems we have here in Congress sometimes and he's printing this merger preferred worth $200 million. It's not equity; it's debt.

It's interesting that we make the argument that the interest rate on most of the junk bonds that TWA has issued are from 16 to 17 percent. Interestingly enough, the merger preferred that he's issuing to himself is going to pay 20.7 percent interest rate. So he gets a higher rate than the Drexel Burnham junk bond dealers. So there's $200 million.

Mr. SHUSTER. I understand where you're coming from.

Mr. COMPTON. OK, the other hundred and——

Mr. SHUSTER. I understand. Thank you. My time is limited.

My concern is that, as I have indicated previously, I don't believe this is the place for those arguments to be made. Indeed, I believe that the question of TWA being fit and able, as you well know, is the argument that you're attempting to make and should be made at the Department of Transportation.

But, beyond that, if Mr. Icahn is attempting to fraudulently extract money from TWA, there are laws on the books that handle this. There are remedies, both civil and criminal, and if you're alleging—one of you used the word "manipulating"; I'm not sure from a legal point of view what you mean by that—but if you're alleging that he's doing something illegal, there are remedies on the books, stiff remedies. He can be put in jail. If those are your allegations, it seems to me that those remedies should be pursued.

Thank you, Mr. Chairman.

Mr. OBERSTAR. I thank the gentleman for those questions.

The Chair recognizes the gentleman from Georgia, Mr. Rowland.

Mr. ROWLAND. Thank you, Mr. Chairman.

The area that I want to talk about is the safety factor which is what we've really been talking about. It's the oldest fleet in the country I believe Captain Ashwood said, and maybe the oldest one in the world outside of third world countries.

I believe that you also mentioned and you clarified the business about new aircraft, and of course the representative from Pennsylvania brought up the structural and mechanical malfunctions per 1,000 flights being so much higher in TWA than in the industry as a whole.

Then I notice in Ms. Frankovich's testimony she said that FAA data showed a dramatic change in TWA's rate of serious accident and incident reports since the year that Mr. Icahn took over, double the rate of the next highest carrier.

Safety is one thing that I'm very concerned about. So, while the focus of this hearing was not safety, I want to talk about that for just a little bit. Over the years that I've been here we've talked about the margin of safety in our air traffic system. Accepting for the moment that maybe the margin of safety of the system as a whole is less than what it was prior to the PATCO strike, for a period of time anyway, would you say that the margin of safety is less with TWA, specifically, now than it was? While it's still safe, is the margin of safety less? Anyone?

Ms. FRANKOVICH. Congressman, we don't want to put ourselves in a position to be making conclusions that we can't make, but we are very much concerned about that possibility. The reason we are here today is because the Department of Transportation has not acted as we have requested that they should. Our time is almost up. As early as tomorrow, Carl Icahn may be in a position to take the money out of this carrier, and we think the lack of that capital investment in parts and in aircraft is, in fact, a potential danger for the future of this airline, for the safety of the passengers, the safety of the employees, and we think the margin of safety is a very big concern where economic pressures do not allow capital reinvestment.

Mr. ASHWOOD. If I may respond also in the following fashion: Congress mandates the FAA to provide a minimum level of safety—minimum; the emphasis is mine on that. Nobody knows what a minimum level of safety is, but if you want to quantify from 0 to 10, 10 being perfection, and we've always striven for perfection, you could consider that the average airline in the United States probably maintains a 7.5 gusting on 8. If you assume for the purposes of this demonstration, if you will, that 5 is a minimum level of safety, it means that there is a 2.5 or 3 points above that minimum level. That's provided by the airlines. It's provided by additional training over and above regulations, changing of components, and things like this that I'm sure you're familiar with.

That's a very expensive pad. It's very costly. When an airline starts pushing itself up against an economic abyss, in some of the things they have to start cutting back in things, they stop cleaning the airplanes, the stuff that's not that costly, that doesn't affect safety, but I figure we've got to fix to find out what a minimum level of safety really means as mandated by Congress for the FAA. That's what we're afraid of.

Mr. SHUSTER. Would the gentleman yield?

Mr. ROWLAND. I yield to the gentleman.

Mr. **Shuster**. I just can't let this statement pass. Even though the witness says that the emphasis on minimum is his, it is totally inaccurate to say that the Congress has said that we require a minimum safety. That is not what the Congress has said to the FAA. We would be derelict in our duties if we said that we require that there be a minimum safety standard set down there. We require safe airlines.

Mr. **Ashwood**. I didn't mean to imply that you didn't, sir. What I was saying was that the charge that Congress has to the FAA, as I understand the charter that the FAA has from Congress—and this is perfectly normal language—that they provide minimum levels. Nobody knows what these levels are. Who can tell?

Mr. **Shuster**. What I'm objecting to is your characterization of the word "minimum."

Mr. **Ashwood**. Well, I was doing it to be illustrative.

Mr. **Shuster**. We require that there be levels of safety that create safety in the air, that we have a safe air transportation system in America. Nowhere does the word "minimum" appear.

Ms. **Frankovich**. Congressman, if I may, in connection with your inquiry as to the FAA data base, I would refer you to Exhibit 100 of our filing and you will see that, without our reaching conclusions as to the meaning of this data, the fact of the data is that the cumulative rate of accident and incident reports per 100,000 scheduled departures for TWA for the period between 1986 and 1988 is 26.10 and the next highest is Continental at 12.2——

Mr. **Shuster**. If the gentleman would yield further to just let me conclude on this——

Mr. **Rowland**. I yield to the gentleman.

Mr. **Shuster**. I thank him very much.

My point is you can't have it both ways. You can't come here and tell us that TWA is a safe airline and then put up charts that would lead any reasonable person to conclude that it's not safe. Now I'm told that in the last round of detailed inspections by the FAA, TWA was fined the least of all the major airlines; it was the most safe airline. I am told further there have been no fatalities for many years. But I don't think you can come here and be disingenuous, tell us on the one hand it's a safe airline and on the other hand give us "evidence" that reasonably would lead one to conclude it's not safe. You can't have it both ways.

Mr. **Ashwood**. I have to clarify something. We are here as three separate entities. In fact, I didn't even talk to my fellow panelists here until we arrived here for this hearing this morning. I'm here representing pilots. That's all I purport to represent.

Mr. **Shuster**. I understand that.

I thank my friend.

Mr. **Oberstar**. The Chair would like to intercede at this point. We have had very extensive hearings on Minimum Equipment Lists and standards on safety from many aspects. The 1958 law, which we have entered into the record at previous hearings, enjoined the FAA to require of airlines the highest possible degree of safety.

In pursuance of that responsibility, of oversight by the FAA of the highest possible degree of safety, the Federal Aviation Administration issues Federal Air Regulations, FARs. They are the standard of safety. You can say they are minimum. You can call them whatever you want, but the point is that they are the standard of safety. Airlines must meet that standard of safety. They can exceed it.

Our concern in this committee is: Do they meet the standard of safety set by the FAA? It serves no useful purpose to further characterize it if they meet that standard and are operating safely.

Mr. Rowland. I thank the gentleman.

Of course, the point that I was making—and I'm sure that neither of you would fly on an aircraft that you didn't consider safe—the point I was making is that an older aircraft with a tendency for more structural and mechanical malfunctions would be less safe than if it were a new aircraft.

But let me ask you something else regarding morale and working conditions of personnel. To go back to the quote that I took from Ms. Frankovich's testimony that the accident/incident rate is higher, would morale, working conditions, or personnel problems have anything to do with that?

Ms. Frankovich. No, they would not because these are FAA-reported incidents. These have nothing to do with—I mean, I suppose I couldn't conclude really what the cause would be. I wouldn't think it would be morale. Certainly employee morale is another question that is at issue in our concern, but I think that's separate from the question of the FAA data base on accidents and incidents, unless perhaps accidents are caused because people are overly stressed or——

Mr. Rowland. Well, that's the point that I was making. What about long hours? Are you required to work longer hours or pilots placed——

Ms. Frankovich. Well, as to flight attendants, we are only in a position to speak for those whom we represent. As flight attendants, we are working far more hours than we worked in the past. That has, in fact, been a great strain on the work force. I think the other groups would have to speak for themselves on that issue.

Mr. Rowland. Well, your statement comes from FAA data, so let me direct my question to Capt. Ashwood.

Mr. Ashwood. Yes, sir. I would say categorically and flatly for the record that my pilots and myself in fact would not fly aircraft that are unsafe. We would not operate under working conditions and rules which we considered to be unsafe.

Having said all that, as far as morale is concerned, I think it ought to be clarified that the problem we, the pilots, are having with the current situation is not with Trans World Airlines. Trans World Airlines is our airline. It's something that we have a very deep, affectionate attachment to, which is one of the very reasons why we're here at this point in time. Our trouble does not exist with TWA.

As a matter of fact, my pilots are fixing to engage in a program, a self-help program, to boost TWA, to boost its marketing capabilities, and so forth, because we feel that it's a good airline and it has been a good airline, and it could become a wonderful one once again.

Our problem rests with the owner, the primary owner of the airline right now. I think that's a very important distinction that we wish to make. We do not have a problem with TWA.

Now any union official will tell you of course there's problems between management and employees; there always has been and always will be, but that's in the routine, normal course of business and we handle that on our everyday basis. We certainly don't need assistance from Congress or from the DOT, for that matter, to handle those matters for us. That's not the reason why we're here. Of course, you know why we're here.

I hope that did answer your question, was responsive, sir, and I hope it did clarify that matter.

Mr. ROWLAND. I thank the gentleman very much. I have no further questions, Mr. Chairman.

Mr. OBERSTAR. I thank the gentleman.

Before I recognize the other gentleman from Georgia, let me attempt to resolve or at least put in perspective the matter of safety. There are allegations in the submission by the flight attendants and others in their presentation to the Department of Transportation with respect to this matter, and there are allegations and claims made by the carrier in its submission to the Department of Transportation. Neither is complete and neither is accurate in its totality.

The accident/incident reports per 100,000 scheduled departures completed does not tell the other side of the story. How many of those were corrected? It doesn't tell the story of how many MELs TWA has. It doesn't tell how much of this was a correctable and corrected item. I won't belabor the point, but it does not give the complete picture of safety.

Likewise, the carrier's attempt to create a standard that does not exist in anyone's measuring system, the percentages of worse or better than TWA in accidents, incidents, fatalities, and totaling them all up, is comparable to adding apples and oranges: The subcommittee has never seen this kind of tabulation before. It, too, is irrelevant to the inquiry.

So I prefer to use standard measurements of this subcommittee on safety which have been established in previous hearings. I would throw out both sets of data for the purposes of this inquiry.

The Chair recognizes the gentleman from Georgia, Mr. Lewis.

Mr. LEWIS. Thank you very much, Mr. Chairman.

Captain Ashwood and other members of this panel, I listened to your statement and your response to questions. This sounds like Eastern Airlines all over again.

Would one of you, maybe one of the consultants, care to compare what is going on with TWA—is that similar to what is going on at Eastern?

Mr. ASHWOOD. Well, sir, yes. I would characterize what's happening at Eastern and what's happening at TWA as two different scenarios which are heading irrevocably toward the same conclusion, and that is severe damage to the carrier and all the other things that we raised before you today, but for different reasons.

In fact, in my response to the last gentleman that spoke, we are not engaged in a war with our airline. I think that we are seeing something different on Eastern right now insofar as between the trade unions on the property and the management of the property there is open warfare. That doesn't exist on TWA. It's a totally different situation.

The net result may be the same in the end because what we're prophesizing—and I hope I'm not Cassandra here—but what we are prophesizing is, in fact, dissolution of the corporation in some manner or style, bankruptcy or whatever.

But the fact of the matter is that we are not at war with TWA. I will stress that over and over again.

Eastern's problems rest with their corporate management and with their ownership. Ours rests only with our ownership and the financial manipulations that are going on.

I believe the basic difference between Mr. Carl Icahn, principal owner of TWA, and Frank Lorenzo, principal owner of Eastern Airlines, is that in his own style Mr. Lorenzo wants to own the largest airline in the world and Mr. Icahn wants to be the richest man in the world, two different objectives, but they are using airlines to reach those objectives.

Mr. LEWIS. Maybe one of the financial consultants would like to respond.

Ms. NEEDHAM. I would agree with the basic difference. I think Mr. Lorenzo, whether you love him or hate him, is trying to run an airline. I think that Mr. Icahn via TWA is trying to use it as a base for borrowing in order to expand his forays into the stock market. I think that's totally different.

Mr. LEWIS. Thank you.

Thank you, Mr. Chairman.

Mr. OBERSTAR. The gentleman from Pennsylvania?

Mr. CLINGER. Thank you very much, Mr. Chairman.

I want to go back to the earlier testimony from Capt. Ashwood. The tenor of your remarks seemed to suggest that you were caught flatfooted or very surprised by Mr. Icahn's proposal to privatize TWA. Now we're going to have some testimony, apparently later this afternoon by a company representative saying that in 1985 when he began to acquire a controlling interest in TWA, Mr. Icahn made no pretensions about his goals; he clearly expressed to the unions his desire to assume control of TWA, rehabilitate the company, and ultimately take the company private.

So if that is true, it would seem to me that you did clearly understand at the time that you were negotiating or that he was negotiating with you, that that was the ultimate goal, to take this company private. As I understood from Mr. Connolly, you at that time supported that ultimate objective.

You seem to be changing now, or at least you suggested to me that you really were somewhat surprised by this development.

Mr. ASHWOOD. No, sir. Thank you for the question. I'm sorry that I wasn't clearer in a previous response.

Of course we anticipated the privatization. We anticipated many things based upon the promises that Mr. Icahn made. But it was the form of privatization that took us by surprise and the rapidity—or I shouldn't say the rapidity, but the lack of notice that was given as to demonstrate what form it would take.

We had anticipated privatization in the same manner as we would anticipate some sort of partnership. We, that is the contract employees at TWA, are supposed to own 10 percent of the company. That implies a partnership. That implies some sort of mutual trust and working together.

We were looking forward to that in many senses because we thought that together we were going to create a TWA of the world class standard that it used to be. However, to our surprise, the thing that surprised us was the form and substance of privatization which we only discovered at the very last moment on August, I believe it was the 31st, at the very least amount of time allowable under law in the SEC filing.

So it was basically like we had a covenant. We felt that we had a covenant that we were comfortable with. Lo and behold, we were suddenly confronted with something that was totally different than we had expected, totally different than we had been promised, and it was a severe blow to us.

Mr. CLINGER. OK. So you're saying that you understood that the objective was always privatization, but that the extent or the nature of that privatization was what did not become clear to you until just recently?

Mr. ASHWOOD. Yes, sir.

Mr. CLINGER. Would that be your understanding as well, Mr. Connolly?

Mr. CONNOLLY. Well, we always——

Mr. CLINGER. Did you understand at the time of the negotiations that it was the intent of Mr. Icahn to go private with TWA?

Mr. CONNOLLY. Oh, yes. Right. Yes.

Mr. CLINGER. Okay. Captain Ashwood, you said we know why you're here. I have to say I'm not exactly sure I know why you're here. It seems to me that the petition that has been filed has not yet been acted on, that it is really up to the DOT to make that decision. I mean, you're not here asking us to make all kinds of factual determinations of very, very complex facts and very, very convoluted negotiations that in one day's time, clearly, we're not going to be able to do.

Why are we here? In other words, it seems to me that in the normal course of things there is a procedure which is established by law that does spell out your ability to have an airing of your grievances and a consideration of your claim through the DOT procedures.

Mr. ASHWOOD. I will be uncharacteristically brief, sir. I'm here doing my duty as a union representative for my pilots. You are listening to me because that's your duty as Congress. What we're asking you to do is to cause the DOT to perform their duty because we have severe doubts that they are prepared to do it.

Mr. CLINGER. Based on what?

Mr. ASHWOOD. Based upon experience with the DOT, based upon the fact that they have already indicated informally that they consider this to be an industrial matter and not a matter of fitness or nonfitness.

As I said in my earlier statement, what we're trying to do is raise questions here. I'm not expecting answers from this committee. I'm not expecting answers from Congress as a whole. But what I want to have are some assurances that the department which has been prescribed by law to look into these things does do its duty and does look into it. That's all that we're asking for.

Mr. CLINGER. But you would not deny the fact that they have the right to make that determination? I mean the DOT has the right to make a determination as to what they will do with this petition.

Mr. ASHWOOD. Yes, sir, but 21 years as a union representative has left me with the impression that they are not always anxious to do that duty.

Mr. CLINGER. One of the things that may be the problem is as analysts have told staff, that you're asking quite a lot of DOT in this examination because of the fact that it really is virtually impossible—and this is an analyst's opinion—to predict with any certainty the financial position of any air carrier just 12 months into the future. If that is the case, if it really is impossible to make that kind of analysis, how can DOT be expected to make an analysis that what's occurring now is going to affect safety or financial stability or anything else?

You have presented certain information, but is that really valid or do you reject the analyst's views?

Mr. BARNES. Mr. Clinger, if I could just try briefly to respond—there are two aspects to this. One is the purely legal aspect. It is our view that TWA was required by law to file its plans with DOT prior to going private. They did not do so. We believe that it's perfectly reasonable for the Congress in its oversight responsibility to look at whether DOT is fulfilling its responsibilities under the laws that you all have passed.

The second issue here, answering your immediate question is, it is possible to make projections. It's possible to look at what TWA's financial position will be after the privatization. That's been done by the analysts that have prepared the documents that are before you today.

Obviously, TWA had to make those projections when it made its filings at the SEC. They made those filings. It was from TWA's own data that the documentation upon which we base our testimony was prepared.

There is no question what the financial position of TWA will be after the privatization is completed, and that's the whole point of the testimony. That's the whole point of this hearing—is to review that matter and look at the national policy implications of that.

When a major air carrier, national and international, finds itself in the financial position that we know it will be in, what the implications of that are for air service in the United States, for the traveling public, for the shareholders who include employees, and obviously for the thousands and thousands of employees who are concerned about whether their jobs will still be there under the financial projections that you can make based upon TWA's own data.

Mr. CLINGER. Well, I think now the Department of Transportation should not intrude into these negotiations unless it's very clear that these kinds of potential dire results could occur. I think we'd all agree it would be unusual that we should interfere in those types of relations unless it was a threat to jobs, safety, or whatever else.

But what I'm saying is that we're looking here—we're speculating—on something that the experts would indicate is highly speculative and that DOT is being asked to make a determination now on something that may or may not occur, and it's very difficult to determine whether it will occur, a year down the road.

Mr. **Barnes**. If I may just respond briefly, from a legal perspective it would be improper for DOT not to intervene. They have a responsibility to intervene because TWA has not fulfilled its obligation under the law to file this matter before the DOT and getting its review of it prior to the action that it's taking. So that's the response to the first part.

The second part is this is not speculative. You can look at what TWA has filed at the SEC. One of the points that ought to be considered is they said some different things to the SEC than they've said in response to our petition before DOT. That's a separate issue, but that's not an irrelevant issue.

You can look at what they filed, the numbers they presented, and you can see what the financial condition of this carrier will be.

Mr. **Clinger**. Is today.

Mr. **Barnes**. You said people shouldn't intervene in negotiations. This is not a matter of negotiations. This is not a labor dispute. The issue here is not something that's in negotiations. The issue here is a privatization plan that is underway, being implemented, and we know what the effect of that will be.

Mr. **Clinger**. I guess that's where I——

Mr. **Barnes**. It's not speculative and there are no negotiations.

Mr. **Clinger**. That's where I have the problem. You project what you think the results may be, but, as troublesome as the financial picture may be at the present time, we have information here that's been given to the staff that it's not possible to conclude from any of the financial analyses, either from your side or from TWA's side that privatization will have any impact upon the operation of the airline.

What we've got here is a real difference of opinion. In other words, you say, yes, you can make absolutely sure that this is going to have a deleterious effect upon the operation of the airline. We've got statements here that say no.

Mr. **Barnes**. Assuming you accept TWA's own numbers, you know that this will be a carrier after privatization that will not have enough income to pay its principal and interest. Its interest payments will exceed the income of the airline, partly because, as was testified earlier, the airline is financing this privatization with junk bonds and their average interest rate is 17.9 percent, which is extraordinary in and of itself. They will not—this is just——

Mr. **Clinger**. Right. Based on facts that we have at the present time before us——

Mr. **Barnes**. This is just facts that the airline has presented these numbers. This is not something that the unions have made up.

Mr. **Clinger**. Right, based on facts that exist and we have in front of us right now, that is true.

Mr. **Barnes**. Yes.

Mr. **Clinger**. But that does not preclude saying that there may be change, that something else could be done that would make it more viable. In other words, I'm saying we may have facts down the road that would contravene——

Mr. **Barnes**. It will not have income adequate to offset that. They say that in their SEC filings.

Mr. **Clinger**. Okay.

Mr. **Compton**. Mr. Clinger, I think it's important to note that these three groups, the IAM, the IFFA, and the Air Line Pilots Association, all the work that we have done has been done independently. We've all hired outside consultants independently, hoping that this would be a good picture.

In other words, as I stated before, we're pilots; we don't understand. We hired independent consultants, all of us individually, without any discussions between us, and we all came to the same conclusion.

Now why would we be the only people to raise the issue? Because nobody else cares. Carl Icahn's happy; the common shareholder is happy; the traveling public doesn't know any better except for the Consumer Federation of America. We're the only ones that took an interest into looking into this.

The common shareholder says, "Hey, I'm getting a good deal. What do I care?" Of course he votes for it. TWA has a book value of something less than $4 a share, I believe, and this buyout offer is $40 a share. Now the highest buyout merger, I believe, has been never—I don't believe it's been more than two times book since we started this deregulated exercise. Now TWA's got a book value of $4 and Carl Icahn's offering $40 to himself.

But the point I want to make is we reached these conclusions independently and with outside counsel. I think we're the only ones that are interested. The DOT needs to take a look at this.

Mr. **Clinger**. Thank you, Mr. Chairman.

Mr. **Oberstar**. Yes, those are very, very important points.

I'd like to come back to one that was touched on tangentially in this last exchange. From the SEC filing by TWA:

> A substantial portion of TWA's cash flow will be required for debt service. Because TWA will have substantially increased its outstanding indebtedness in conjunction with the merger, the potential adverse effect on TWA's earnings resulting from any downturns in general economic conditions or TWA's business or any work stoppage or other labor disturbance may be greater than it would have been without the incurrence of such additional indebtedness.
>
> TWA expects, but there can be no assurance, that cash flow from operations should be sufficient to enable TWA to meet its fixed charges and scheduled debt repayments prior to maturity of the increasing rate notes in 1992.

Further,

> TWA's cash flow is not expected to be sufficient to enable it to repay the principal amount of the increasing rate notes, fixed rate notes, the 1993 notes, or the senior bridge notes at maturity in the absence of refinancings.

Further,

> TWA may be required to dispose of assets, although there are no present plans or commitments to do so, and the union agreements contain certain restrictions on TWA's ability to dispose of certain of its assets.

Now I think that goes to the heart of the concern about the future of the airline. The principal point of this hearing is the relationship between economics and fitness.

Let me ask the financial analysts on the panel for a response to this. I'm certain that you have read this documentation because I think it appears in your filing with the DOT. We have obtained this information separately from the SEC.

A substantial portion of TWA's cash flow will be required for debt service. What does that mean? What is substantial? How much of it? What does that mean for the financial operation of the airline?

Ms. NEEDHAM. Well, when we looked at the cash flow, meaning their income plus depreciation, we found that, given the numbers that they had in their prospectus, that they would have a shortfall in coverage of about $200 million per year, meaning that they cannot really pay their interest and their debt payment unless they go back to the junk bond market. As has already been noted, that's a very expensive market to go back to.

Mr. OBERSTAR. A substantial portion? What would be the cash flow as you analyze it?

Ms. NEEDHAM. As we analyze it for 1987, using their numbers, if you had adjusted for 1987, as shown in their pro forma statement on page 52, you get a cash flow of $662.673 million and you get requirements, for interest payments, lease payments, cash preferred dividends, and principal repayments, of $865.369 million.

Mr. OBERSTAR. So that's where you come up with the roughly $200 million shortfall?

Mr. SHUSTER. Would the chairman yield?

Mr. OBERSTAR. Yes, I'd yield to the gentleman.

Mr. SHUSTER. I thank my friend.

In a previous life, before I lost my mind and ran for Congress, I was involved in filing 10K's with the SEC and running companies. When you make a filing at the SEC, you had better put in your statement every conceivable, possible, negative thing that can happen to you. You had better be more than conservative. You had better be pessimistic, because if you aren't, you're going to find yourself in a myriad of lawsuits because it will be claimed that you overstated, that you were too optimistic in your filing.

The kinds of cautionary words that we read in this filing are not unusual at all. They're typical. When management says they believe that it will have sufficient, that's their belief. If analysts, analyzing, say they don't think they will, that's their belief, but that sort of brings us around the loop, back to the point.

For us to sit here and try to decipher this enormously complex financial matter is something we can't do, and only a matter that, if it does get to the question of fit and able, is for the department to do.

Mr. OBERSTAR. Well, I think it does get to the question of fitness and TWA will have an opportunity to respond to this point because I'm going to raise the same question with them. It isn't a matter of belief. I don't think we want to proceed in matters in aviation on the belief of one or another party. These are statements that rely upon fact. I simply want to know how they got there.

This group says it isn't good enough; TWA says it is. I think we want to lay the facts on the table and ascertain why and how.

Mr. SHUSTER. But my point, Mr. Chairman, is that——

Mr. OBERSTAR. I understand——

Mr. SHUSTER. It's enormously complex. Indeed, when we talk about the value, the numbers, the value of TWA, of course we're talking about the accounting numbers. As any financial analyst knows, there are different ways you measure value. What the accounting numbers say is one way to measure value; the market value is another way; the value in use; the value in exchange. An economist can go through a half a dozen different, all legitimate, ways of measuring value and come up with entirely different numbers. Facts are not stubborn things all the time.

Mr. OBERSTAR. The Chair did not characterize TWA's findings. In fact, it's a remarkably candid filing about its current situation and projected options in the future. I think those are simply matters to be aired and I want to hear TWA's response. I know that they will have a response for this. We'll lay that on the table.

Let me proceed with this. What assets are there in the corporation that can be disposed of to cover fixed charges?

As the company says in its filing with the SEC,

> To the extent that cash flow from operations is insufficient to cover fixed charges, TWA may be required to dispose of assets, although there are no present plans or commitments to do so.

With that caveat, what are the assets, and please distinguish between those that are essential to flying an airline and those that are not. Maybe they have other things; I don't know. What's your analysis of it?

Mr. ASHWOOD. Peripheral, to not be facetious, would be typewriters and desks and things, not essentials of running of the airlines. But "essential to" would be the Kansas City overhaul base, international route structure one at a time, maybe Chicago-London, maybe London-Scandinavia. These are all tangible assets that——

Mr. OBERSTAR. Tell me, if they sold their international route structure or some part thereof in order to provide the cash flow sufficient to cover fixed charges, what would that do to the financial condition of the airline?

Mr. ASHWOOD. It's self-cannibalism, sir, starting with your foot. You start eating yourself. Once you start selling off the plant, you've now reduced your ability to produce sufficient income to stay alive.

In fact, I'd like to thank Mr. Shuster for making the arguments for us in terms of the complexity of this problem and the necessity to freeze everything on hold right now until the complexity can be unraveled and a proper look taken at the situation.

Mr. OBERSTAR. The airline did assign a value to those routes, and that was cited previously in testimony. Could you please refresh my memory?

Mr. COMPTON. I believe it was——

Mr. OBERSTAR. Mr. Compton, I think you used that figure?

Mr. COMPTON. Yes, sir. I believe initially it was $400 million, and then I think in their latest filing they put in a value of $375 million on them.

I did agree with Mr. Shuster's point that normally in an SEC filing that you do present a worst case to protect yourself with the SEC, but it's interesting, when TWA first made their filing I believe in the fall or late summer of 1987, they indicated that operating income for 1987 in their SEC filing was going to $305 million, and yet it came in at $249 million. So they were short by $55 million.

Even though it should be a pessimistic view, they weren't quite pessimistic enough relative to 1987, and they were more than halfway through the year when they made that adjustment.

Ms. **Needham**. It's also interesting that in their response to our filing at DOT they say, and I quote,

> Further, the projections provided TWA's investment bankers, quoted at page 30 of the IFFA petition citing TWA's schedule 13(e)(3) at 18, were expressly qualified by TWA as not being reliable and otherwise were optimistic and did not have the approval of TWA's board of directors.

That's on page 29 of their filing.

I also appreciate your noting how complex these things are. I would second the fact that what we want DOT to do is to freeze the assets, which would not hurt the airline, and sort this matter out by doing a proper financial fitness review.

Mr. **Oberstar**. All right, that helps.

TWA claims that it will emerge from the privatization with about a billion in cash and marketable securities. That sounds like a very strong position. What's wrong with it?

Mr. **Compton**. I believe you are correct. I believe they will have a billion dollars, but you've got to look and see, is that really liquid? Is that—what is the billion dollars? I think what the billion dollars is is *x* number of shares of Texaco and *x* number of shares of USX which are not very liquid when you own a big clump of them.

Also, we suspect—and I believe the prospectus indicates—that once Icahn takes the company private, he's going to establish another holding company and then he's going to exchange a portion of that billion dollars in Texaco or USX for, as Captain Ashwood likes to say, Toys 'R Us or whatever it might be, into the holding company. In exchange, TWA will get common stock in this new holding company that is a corporate raid.

What ends up happening is TWA is just the means to borrow the money to go on corporate raids.

Ms. **Needham**. I'd also like to respond to that. I think that it's a question here of timing. There is roughly a billion dollars in marketable securities, but $468.9 are classified on the books as an obligation to an affiliate, meaning that they will leave. In the prospectus it states quite specifically that the holdings of TWA of Texaco and of USX stock will be transferred to the new acquisition company. So there goes another $471 million.

It's there, but——

Mr. **Oberstar**. So Mr. Icahn will have a very substantial financial empire apart from TWA in other areas. Has he ever made any commitment to divert assets from those entities and operations to TWA should there be a need to do so, should the worst case scenario of his filing with the SEC come to pass?

Ms. **Needham**. There's nothing that I have seen in any of the filings at the SEC, the prospectus, or the 10–Q, or even the filing that was made to DOT. There's nothing in there that legally obliges Mr. Icahn or Icahn-related entities to provide the airline with any funds, although the airline is responsible for that billion dollars of debt that was used to buy the stock and it's responsible for the interest.

Mr. **Oberstar**. In the case of a bankruptcy, should that occur, are any of the other parts of that Icahn financial empire available for attachment to protect TWA?

Mr. **Ashwood**. Sir, based upon our experience thus far, I would be willing to make book on it that there is not.

Mr. **Oberstar**. All right. Before the acquisition, TWA was acquiring new aircraft on a regular basis. Some estimates are as high as $200 million a year. Certainly the acquisition and replacement program dropped off after the acquisition, with the exception of 15 aircraft acquired on an operating lease basis.

What are your estimates of the needs for new aircraft and what will be the financial requirements, and how will those be met under the privatization scheme?

Mr. **Ashwood**. By the best analysis, sir, outside of our union, on the street, if you will, Wall Street I'm referring to, airline analysts, an absolute minimum capital investment—and aircraft I'm talking about now, not other things—would be on the order of $350 to $400 million per year for at least a 3-year period. That, I would point out, would only bring us up to 1988. By the time that was done, we would still be behind in terms of the clock. So you're really looking at somewhere between $1.2 billion to $2 billion. I realize that's quite a spread, but if you take the smallest figure, $1.2 billion, just to get even, just to get even and give us a chance in the industry. That, I would point out, is only in terms of aircraft purchase; it doesn't even contemplate the much-needed refurbishment of terminals, purchase of new gates, and all the other things that are required for the normal conduct of business of an airline.

Mr. **Oberstar**. Your allegation is that the current cash flow is not sufficient or projected cash flow will not be sufficient to make those new acquisitions?

Mr. **Ashwood**. Sir, we couldn't borrow enough money with the debt load that we will be suffering from under this privatization to finance a new corporate automobile.

Mr. **Compton**. I think it is interesting, too, to compare what TWA has been doing relative to our competitors. In 1987, TWA spent $76 million on capital expenditures, $76 million. Off the top of my head, U.S. Air spent in excess of $500 million; Northwest, $600 million; Texas Air, American Air, United, Delta, all well over $1 billion. Pan Am—we all know what dire straits Pan Am's in—Pan Am spent $250 million. Yet, TWA spent $76 million in 1987, a year in which they were profitable, a year in which they like to brag that it was the most profitable year in the history of the airline.

Through the first six months of this year, I believe, TWA spent $38 million on capital expenditures, and our competitors are spending a billion dollars a year.

Mr. **Oberstar**. I thank you very much for those responses. We will raise these and other questions with our next panel, which will be the TWA representatives.

Mr. **Bosco**. Mr. Chairman, could I ask one, very quick question?

Mr. **Oberstar**. I'm sorry, I didn't see you.

Mr. **Bosco**. No, I'm sorry. I've already asked questions, but I have one quick question for Mr. Connolly.

You mentioned that the pilots own 20 percent of the TWA stock and, after this privatization, what, they'll own 10 percent, did you say, or——

Mr. CONNOLLY. We have an agreement that indicates—and we have a case pending in the State Court of New York that indicates that the employees will own 20 percent of the new entity after it goes private and it will be a shared distribution of 20 percent. Out of that 20 percent, between the pilots and us, we own 10 of it.

Mr. BOSCO. But in the sense that your stock has vastly increased in value, you're not really harmed by that, are you, or has your stock increased in value?

Mr. CONNOLLY. Well, if we gave $150 million in concessions, then what we get out of it is approximately 4 percent of the declared stock, which even if you turned it over at the most advantageous rate on the market, $35, $36 a share, wouldn't get you back a third of the concessions.

Mr. BOSCO. But, still, your 20 percent of that stock has vastly increased in value. I mean, if you take aside what you feel you gave up for it, that stock has increased in value due to this——

Mr. COMPTON. Excuse me. Let me give you TWA's—what TWA is going to do—and excuse me, Tim, and correct me if I'm wrong—but TWA's contention—I agree with you, we should have something of value here, but TWA's intention, I believe, is to give us our percentage of the stock in this new TWA that's going to have zero, less than zero equity.

So tell me what percent of zero is?

Mr. CONNOLLY. We're currently in an argument with them now over who it will be that will be the master or whoever they appoint to determine the value of that stock, and we're still in discussions as to arrangements, just what the value of that——

Mr. BOSCO. But you haven't determined that yet? You could end up with a very valuable asset there, couldn't you?

Mr. CONNOLLY. Well, historically we also wound up 3 years ago with a profit-sharing plan wherein we got $250 out of three years' worth of concessions. So we're not positive in our thoughts that we're going to wind up with anything of value.

As a matter of fact, in the profit-sharing thing that we took as a result of the concessionary bargaining that we did, we put a value on it of zero at the time, 3 years ago, and it turned out we were only $250 off.

Mr. BOSCO. OK, thank you.

Mr. OBERSTAR. The subcommittee will stand in recess pending this vote and return to hear from the TWA panel.

We thank the witnesses for being so diligent in sitting here all this time.

Mrs. JOHNSON. Mr. Chairman, I just wanted to thank this panel before they left. I'm sorry that I had to be in and out, but I did in the course of my other duties have a chance to read your testimony and appreciate your raising many significant issues.

I checked with some of my colleagues and most of the questions I had have been answered. We do have a vote, so I just wanted to thank you and will be here off and on for the rest of the day. Thank you.

[The prepared statements of Captain Ashwood, Ms. Frankovich, and Mr. Connolly follow:]

STATEMENT OF
CAPTAIN THOMAS ASHWOOD
CHAIRMAN, MASTER EXECUTIVE COUNCIL,
TRANS WORLD AIRLINES
AIR LINE PILOTS ASSOCIATON

BEFORE THE

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

U.S. HOUSE OF REPRESENTATIVES
SEPTEMBER 29, 1988

Mr. Chairman, and distinguished Congressmen, I am Thomas Ashwood, Chairman of the TWA Master Executive Council. Thank you for allowing me to be here today to speak on behalf of the 3,200 plots at Trans World Airlines about Carl Icahn's plan that would radically change the financial structure of Trans World Airlines.

Three years ago the House Subcommittee on Aviation held hearings to investigate whether Mr. Icahn's planned takeover of TWA was in the public interest. In addition, the then current management of TWA asked the Department of Transportation to inquire into whether TWA would remain fit if Mr. Icahn took control.

Mr. Icahn testified that he intended to strengthen TWA and make it a profitable and efficient carrier, offering better service to the public. Mr. Icahn testified that he was going to improve TWA's long-term profitability and strength. He testified that he would bring new management skills to TWA, making it a strong and growing airline. Relying upon Mr. Icahn's testimony and promises, the Subcommittee and the Department determined that no action against Mr. Icahn's proposed takeover was necessary. Unfortunately Mr. Icahn's proposed restructuring of TWA, for his own benefit, belies his earlier testimony before that Subcommittee.

Congress was not alone in being taken in by Mr. Icahn. In August, 1985 the Air Line Pilots' Association entered into an agreement with Mr. Icahn based on similar promises. The TWA pilots gave up more than $100 million a year in pay concessions in reliance on Mr. Icahn's promises that he was not going to sell of the airline's assets for a quick profit. Mr. Icahn told the TWA Pilots that he intended to run the carrier as a profit making enterprise. He said that he would make the capital expenditures that were absolutely necessary in order to make TWA a viable competitor in the deregulated environment.

Our trust in Mr. Icahn's promises, and our reliance on his word, was misplaced. He is well on his way to carrying out a plan to take TWA private and strip it of its liquid assets. If this plan is carried out, Mr. Icahn will have $665 million in cash and securities, while TWA will have a negative net worth, an infinite debt/equity ratio and interest payments that cannot be paid out of operating income.

I believe the financial restructuring will eliminate TWA as a significant competitor in the airline industry. TWA's decling market share since Mr. Icahn took over is undsiputable proof that Mr. Icahn's management has not resulted in a stronger airline. Moreover, Mr. Icahn's restructuring is proof that he has lost any interest in running an airline. That lack of interest, together with his plan to remove TWA's liquid assets and use them in other pursuits that do appeal to him, signals the beginning of a possibly irreversible tailspin into bankruptcy.

I believe that Mr. Icahn's plans pose a significant threat to the economic welfare of consumers. Lest I seem to be exaggerating, let me explain precisely what Mr. Icahn intends to do.

According to documents TWA has filed with the Securities and

Exchange Commission, there is a merger agreement among TWA, three partnerships affiliated with Mr. Icahn (the Icahn Entities), and TWA Acquisition, Inc. (the Merger Sub). The Merger Sub, a shell corporation, is wholly owned by the Icahn Entities.

Before the Merger is completed, the Icahn Entities will form a new corporation, Holding, Inc. Holding will be given the shares of TWA Common Stock owned by the Icahn Entities, as well as all the shares of Merger Sub. When the Merger occurs, the public shareholders will have to give up their shares of TWA common stock. In return, they will receive $20 in cash and $30 face value junk bond. I should note that the market has very little confidence in the New TWA, since it is valuing that $30 junk bond at around $15.

Paying the public shareholders $20 per share for their common stock will cost TWA about $141 million. In addition, TWA will have an additional $212 million in subordinated debt.

But contrast this treatment of the public shareholders with what Mr. Icahn will receive in the Merger. Holding, one of the Icahn entities, will receive $20 in cash or marketable securities for each share of TWA common stock owned by the Icahn Entities. This will cost TWA $469 million. But Mr. Icahn does not stop there. He will also receive a new class of TWA preferred stock. This is a special type of preferred stock, because it has full voting rights. This special preferred stock will have a market value of $196 million. But that is not all that Mr. Icahn will receive. In addition to $665 million in cash and securities, Mr. Icahn will also receive back the same number of shares of TWA that he controlled before the Merger.

Thus, in a transaction where Mr. Icahn will take $665 million out of TWA and contribute nothing, he will wind up with complete control of TWA. The result of this massive payment to Mr. Icahn by an already troubled airline is very disturbing to TWA's pilots. We have spent out careers making this airline work. TWA's pilots gave up over $100 million a year to help Mr. Icahn carry through on his promises make TWA a stronger and more profitable airline. Now, TWA's own statements show that the airline will be in serious trouble if Mr. Icahn is not stopped.

TWA's Proxy Statement shows there has recently been a significant increase in TWA's historically high debt to equity ratio. The Proxy Statement shows that in connection with a proposed financial restructuring in 1987 TWA incurred debt of approximately $798 million. The Proxy states that TWA will be incurring an additional $243 million in debt.

The Proxy Statement shows of the effects of this additional burden of debt. It reveals that if the merger had been completed as of April 1, 1988, TWA would have had long-term debt and capital lease obligations of approximately $2.5 billion. There would have bean a $14.5 million deficit in shareholder's equity.

Interest expenses would have increased to approximately $467 million per year. TWA admits that these increased interest expenses could not be met out of current cash flow, and that the airline might have to dispose of assets to meet its interest obligations. Thus, any economic downturn could force bankruptcy or the dismantling of TWA's assets.

TWA also admits that its cash flow is not expected to be sufficient to repay the principal amounts of its increasing rate notes, fixed rate notes, and certain other notes at maturity. TWA will have to refinance that debt -- or default on its loans and debts.

These added interest and debt costs alone will leave TWA in a financially unsound state. But Mr. Icahn does not inted to leave TWA alone as long as there are any assets left he can transfer to his own companies.

The Proxy Statement refers to yet another massive transfer of TWA's assets that could adversely affect TWA's viability. Mr. Icahn apparently contemplates at some unspecified time transferring TWA's valuable stock, including its stock in Texaco and USX, to a new Icahn-owned holding company. Mr. Icahn has already transferred a large amount of Texaco stock to one of his many corporations. He may transfer more of that stock to himself as part of the $469 million he will receive when the merger is completed.

It appears that whatever Texaco and USX stock is left after the Merger will soon be transferred to a new holding company. The new holding company will then issue subordinated debt securities and common stock, with an unassessable value. This proposal, if implemented, will complete the wholesale transfer of a significant portion of TWA's liquid assets from the carrier to other Icahn controlled entities.

This Texaco stock was paid for by debt borrowed using TWA's assets, debt that could have been used to upgrade TWA's aging fleet of aircraft. The money used to pay the interest on that debt came from TWA's operating income, money that could have been used to strengthen TWA. But although TWA paid the cost of Mr. Icahn's speculations in stock, it will not benefit from those speculations.

If Mr. Icahn carries out is plan to distribute TWA's assets to himself and his companies, without making the commitments necessary to maintain TWA's competitive status, the carrier's ability to operate in the future will be irreversibly damaged.

The harm to consumers will be enormous. Consumers are among TWA's largest creditors. According to the Consumer Federation of America, over the last year, consumers held unsecured obligations of TWA ranging from one-quarter to one-half billion dollars in the form of prepaid, unused tickets. They also hold millions of dollars of frequent flyer travel rights. Due to the individual nature of their claims, however, these consumers are particularly vulnerable to cutbacks in TWA's services or to bankruptcy.

TWA's demise would pose a threat to consumers in a broader sense as well. Eight airline groups provide more than 90% of the industry's available seat miles. Even architects of airline deregulation such as Alfred Kahn have become concerned about concentration in the airline industry. Congress and the Department of Transportation should not stand idly by while one of those airlines is decimated by a corporate raider whose primary interest appears to be draining its assets for use in his private speculative ventures.

I would like to talk briefly about something dear to the heart of every pilot: airplanes. Every day we climb into the cockpits of those planes and we fly them. Those plans are our home for hours on end, and they are the basis of our careers. Because we are in those planes on a daily basis, we see what Mr. Icahn is doing to the TWA fleet.

He is letting it grow old. He is not replacing aging airplanes. He is not buying new airplanes. For three years we have heard Mr. Icahn talk about "studies" and "plans" for new airplanes. But we cannot fly studies or plans. It does not take much study to know that when every other airline, including Pan Am, is spending hundreds of million, even billions of dollars on new airplanes, there is something seriously wrong when TWA refuses to spend even one dollar buying new planes.

I do not believe Mr. Icahn intends to buy new airplanes, no matter how much he studies the issue. Buying new planes will cost TWA money, and Mr. Icahn believes he has better things to do with TWA's money.

As a pilot, and as a representative of over 3,200 pilots, that disturbs me. An airline can survive many things, but it cannot grow, or even survive, without modern airplanes. Don't misunderstand me. I am not saying that the airline is unsafe today. TWA pilots would not fly unsafe planes. But even the best of planes get old, and an airline cannot survive when it has no money to buy new planes, or when it is run by a man who refuses to do so.

Accordingly, I believe the Department of Transportation should afford the TWA Unions the relief they have requested in their petition for the institution of a continuing fitness investigation into Mr. Icahn's management of TWA. That relief should include not only an oral evidentiary hearing, but an order establishing a voting trust to hold all TWA's shares owned by Mr. Icahn and its affiliates pending completion of the investigation. The Department whould be instructed to make a full examination of the effect of Mr. Icahn's proposal on the nation's sixth largest carrier before the plan is implemented. The public interest requires no less.

STATEMENT
OF
VICTORIA FRANKOVICH

on behalf of the

Independent Federation of Flight Attendants

Mr. Chairman and Members of the Committee, on behalf of the TWA employees I represent and the travelling public I want to thank you very much for your concern about the future of Trans World Airlines. I have worked for TWA for 19 years; Mr. Icahn has only been around for 2-1/2 years. While Mr. Icahn has claimed that TWA will still have $1 billion in assets, his privatization scheme legally entitles him to pursue publicly announced plans to extract $1.3 billion, leaving TWA with $2.6 billion in debt and a negative net worth. Mr. Icahn may regard TWA as an expendable piece on his corporate takeover gameboard, but TWA's loyal employees, and the passengers we serve, deserve better treatment.

On August 30, 1988, we filed with the Department of Transportation a Petition for Emergency Relief and Complaint, which is **not directed against TWA, but instead asks for an investigation of the activities of Carl Icahn**, who has revealed a plan to strip TWA of its valuable assets, leave the debt, and devote his attention to other pursuits. Our very carefully documented Petition is based on facts obtained from TWA and Icahn group filings before the Securities and Exchange Commission and the records of the Federal Aviation Administration. With your permission, I ask that these voluminous pleadings and exhibits be incorporated into the hearing record.

TWA's Answer in the DOT docket -- which we have also included in our materials for the sake of fairness -- evades the major issues: how much money does Mr. Icahn intend to irrevocably commit to capital expenditures for new aircraft which he promised this committee in 1985 he would continue -- but has not; how much of TWA's remaining "assets" will be used for aircraft acquisition and expanded airline operations after Mr. Icahn takes out over $1 billion of the company's cash and dividend paying blue chip securities in other companies that could be readily converted to cash; how will TWA pay its debts when current cash flow is inadequate to service projected interest payments that will soon equal $466 million -- close to a half a billion dollars a year -- at an average interest rate over 17%; and, the extent to which pressures to pump up TWA's current balance sheet are affecting safety, particularly when FAA data show a dramatic change in TWA's rate of serious accident and incidents reports since the year that Mr. Icahn took over -- double the rate of the next highest carrier.

Mr. Chairman, let me emphasize here that we are not saying TWA is currently unsafe, but what we are saying -- and I don't believe that an objective observer could disagree -- **DOT should look fully and carefully into this matter**. DOT uses the FAA data for annual safety reports to Congress and in evaluating the fitness of small air carriers. If the data are reliable enough for these purposes, then they should be good enough to signal the

need for a more probing safety investigation at TWA. Mr. Burnley recently told the Senate Aviation Subcommittee that he would send people to investigate the GAO findings about the high level of fares at St. Louis, a study that must necessarily be directed at TWA, which controls 82% of the flights at Lambert Field. While the DOT is there, they should look at other more important problems affecting TWA.

In response to our Petition, Mr. Icahn has offered a few nitpicks, new information that was not contained in SEC filings that are intended to be full and truthful disclosures, and some very incomplete, nonresponsive safety data. But mostly, Mr. Icahn has offered variations on the theme that he can do whatever he wants -- despite his solemn assurance to this Committee in 1985 that he understood that a certificate of public convenience and necessity carries with it certain obligations to operate as a common carrier in the public interest, particularly since TWA enjoys the economic benefits of limited government franchises to operate on many transatlantic routes.

Mr. Icahn has sought to belittle the very important issues concerning TWA's future survivability by calling this a labor dispute. But this is not a personal vendetta for me -- although I can't speak for Mr. Icahn. This is not a dispute about wages; our concern is, more fundamentally, whether TWA will continue to be an employer. We are not alone; representatives of TWA's other employees have joined in fighting Mr. Icahn's privatization plan using the few legal weapons at our disposal. Finally, the truth of what Mr. Icahn is trying to pull off has not escaped the attention of the Consumer Federation of America or the financial press.

Unhappily, since time is running out, I am beginning to fear that the Department of Transportation may well be missing the point that there is a substantial danger to the public interest here. Protecting the public interest is the job Congress gave the Department. While TWA claims that the DOT cannot or should not act, the law, I am told, is quite different. Prior to deregulation, the Civil Aeronautics Board strictly controlled who could own an airline and just as importantly, limited intercorporate transfers of cash or assets and dividend payments between an airline and any of its holding companies. This assured that airline revenues were used for legitimate airline purposes and that consumer funds were not diverted, since airlines at any given point in time hold substantial amounts of cash representing advance ticket sales.

Deregulation loosened up on the standards for entry into the airline business. But Congress added the legal requirement that anyone who owns an airline must continually be financially fit, willing to devote resources to airline services and able to provide air transportation services complying with safety and economic regulations. DOT has adopted regulations requiring airlines to notify the Department of substantial changes so that it can evaluate their effect on continuing fitness. TWA did not advise the Department of its plan to substantially change its corporate structure, although in our opinion it is legally obligated to do so.

The DOT has full authority to investigate and, if warranted, regulate the distribution of TWA's assets to Icahn holding companies. Days after the Airline Deregulation Act was signed, the CAB specifically stated in Order 78-10-123 that it retained all previous authority to regulate intercorporate relationships between an airline and its holding companies. If there was evidence that money or assets were going to be removed from airline operations, and there was a question whether future operations would be jeopardized, the authority to condition an airline's certificate was, in the CAB's view, unaffected by deregulation as a legal and policy matter. Adding a continuing fitness regime was the deregulatory *quid pro quo* for eliminating the very detailed regulation over an airline's routine corporate activities. The continuing fitness regulations, which TWA is now flaunting, are theoretically designed to afford DOT an opportunity to review the major transactions that could affect an airline's future operations, including intercorporate transfers to holding companies. Under settled legal precedent, DOT would seemingly have no choice but to act on our Petition.

The problem comes when "deregulation" becomes a codeword for turning a blind eye to the public interest. What Mr. Icahn contemplates is not profit taking, it is pillage. It utterly amazes me that DOT might hesitate to require that TWA comply with its regulations by explaining how Mr. Icahn's plan to extract $1.3 billion from TWA in any way serves the public interest.

Let me briefly review the key financial statistics, which are discussed at great length in our DOT Petition and Reply.

Carl Icahn's initial equity investment in TWA, which he borrowed, was $361.9 million, according to his most recent SEC filing (TWA June 10-Q p. 11, footnote 12c). Mr. Icahn, individually or through his myriad secret holding companies, has secured the legal rights to take *all* of the following distributions of TWA cash or equivalents, dividends, or other payments:

$469.9 million	in TWA cash, cash equivalents, *i.e.*, marketable, dividend-paying blue chip stock in USX and Texaco retained as an "asset" on the TWA balance sheet but is classified as a current "obligation to affiliate" for purposes of removal.
$471.0 million or more	in any remaining USX and Texaco stock to be used as an "equity contribution" to a yet-to-be-created Icahn raiding company.
$290.3 million	in face value "Merger Preferred" stock enjoying accelerated redemption features.
$40 million	in *annual* dividends on Merger Preferred.
$96.5 million	(paid to Ferris Wheel - an Icahn company -- as of December 31, 1987) a draw, *which can be increased* up to $300 million.
$21 million	from a 10-year lease TWA signed in an Icahn-owned building.

The total Mr. Icahn plans to take out (not including other previous instances of self-dealing discussed in the Petition) comes to **$1.388 billion**. At the same time, Mr. Icahn will have accomplished two other objectives: (1) The Icahn companies' share of TWA common stock will have increased from 76% to 90% without any payment for the increased shares, and (2) as a private company, TWA will not be subject to certain securities regulations or potential enforcement of the legal duties owed to shareholders of the publicly traded TWA.

Since 1986, TWA's total net property declined from $1.92 billion to $1.87 billion. Under Mr. Icahn, TWA has borrowed **$1.3 billion** (nearly doubling its debt, which post-privatization will equal $2.6 billion). Of this amount, about $150 million was needed to help TWA get over the terrorist-induced traffic slump in 1986, and this debt has not been retired from subsequent earnings but rolled over at a higher interest rate to purchase other companies' stock. In short, Mr. Icahn bought stock rather than investing retained earnings and borrowed funds in the airline.

After privatization, Mr. Icahn will get the cash and stock that was purchased with these borrowings. TWA will get to keep the debt. The annual interest payment will be $466.8 million -- at an average interest rate of 17.9%. TWA will have a negative net worth because liabilities will exceed assets, and, absent even more borrowing, will be unable to cover the projected $200 million shortfall between cash flow and interest and expense.

The liquid assets leveraged out of TWA are maximized by accounting magic. This transaction has been nominally structured as a "merger" rather than a straightforward tender offer (which is all that would be required to buy out the public shareholders, and to which IFFA has no objection). Before the merger, all tangible and intangible assets are "marked up." The extraction of the cash and marketable securities thus understates the impact on TWA's future viability. For example, TWA has assigned the value of $175 million to its limited-designation international markets (in addition to marking up facilities used in these operations). A change in international aviation policy could seriously erode their "value." But even if TWA were to dispose of these "assets" (which requires DOT permission), there would be an even more significant adverse impact from lost revenues. TWA would still be stuck with the debt incurred so that Mr. Icahn could buy USX and Texaco stock, but would have less revenue coming in. This creates greater pressures to cut costs at the risk of safety, and dispose of still more assets, until there is nothing left to cannibalize. Given the level of the debt and the magnitude of the liquid assets that Mr. Icahn intends to strip out of TWA, this process need not take a long time.

Still there are those who might tell you that Mr. Icahn owns TWA, so he has a right to "redeploy" his assets. Like all oversimplifications, this rather naive notion invites abuse because it presumes a good faith desire to manage an airline to derive profits by providing a more efficient service. Once again, I invite members of the Committee to peruse our DOT pleadings to get a flavor of the financial machinations that explain TWA's short-term "financial turnaround" at the expense of its longer-term financial health and competitiveness.

In deciding public policy issues, DOT should be forced to consider not only the private ambitions of Mr. Icahn but a far broader range of interests: those who depend on a financially viable and competitive TWA and those who dealt with Mr. Icahn not knowing the details of his privatization scheme. The following groups are among the unwilling contributors to the pot of money that Mr. Icahn wants to cash out:

- Airline passengers or contractors prepaying for tickets or other promotions such as discount coupons and frequent flyer bonus mileage. TWA's 1st quarter 1988 advance sales totalled $423.9 million.
- Employees whose pay and work rule concessions total $300 million annually.
- Communities, such as St. Louis, which depend on TWA for vital air transportation.
- Trade creditors owed $603.9 million.
- The many investors buying TWA junk bonds who never had a say in the privatization, even though it vastly increases their risks with no corresponding benefit to TWA.
- Airports, who are induced to provide public money for facility development, but are often stuck with unpaid landing fees and gate and counter leases.

Perhaps the cruelest deception possible is to pretend that there is government regulation over air carrier fitness if DOT fails to act now. We have regulations, but TWA has not been required to comply. TWA's passengers, employees, or creditors certainly have had no say in this process. It is up to the DOT, which licenses airlines, to protect the public trust that Mr. Icahn is now so obviously seeking to violate.

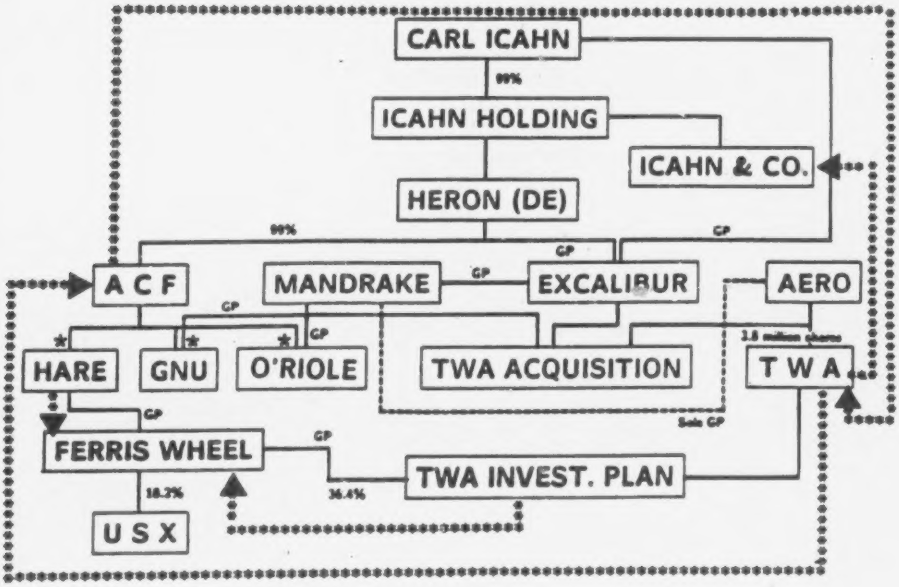
Mr. Chairman, I am still hopeful that DOT will issue an order of investigation with an interlocutory order temporarily stopping distribution of TWA's nearly $1 billion worth of cash and equivalents to Mr. Icahn until the Department has studied this issue more carefully. However, as this Committee found in its hearings on Galaxy Airlines, the active interest of the Congress -- and perhaps even more explicit legislation -- may be needed.

Thank you for your interest and attention. My counsel, financial consultants or I would be happy to answer any questions.

A PORTION OF THE ICAHN EMPIRE

FLOW OF FUNDS AND COMPANY RELATIONSHIPS

(TWA S-4 8/12/88)


CARL ICAHN
99%
ICAHN HOLDING
ICAHN & CO.
HERON (DE)
99%
GP
GP
A C F
MANDRAKE
GP
EXCALIBUR
AERO
GP
★
★
★
GP
3.8 million shares
HARE
GNU
O'RIOLE
TWA ACQUISITION
T W A
GP
Sole GP
FERRIS WHEEL
GP
18.2%
36.4%
TWA INVEST. PLAN
U S X

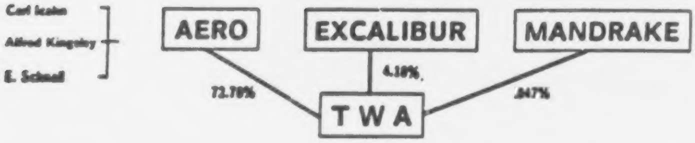
GP = General Partner

★ 100% owned

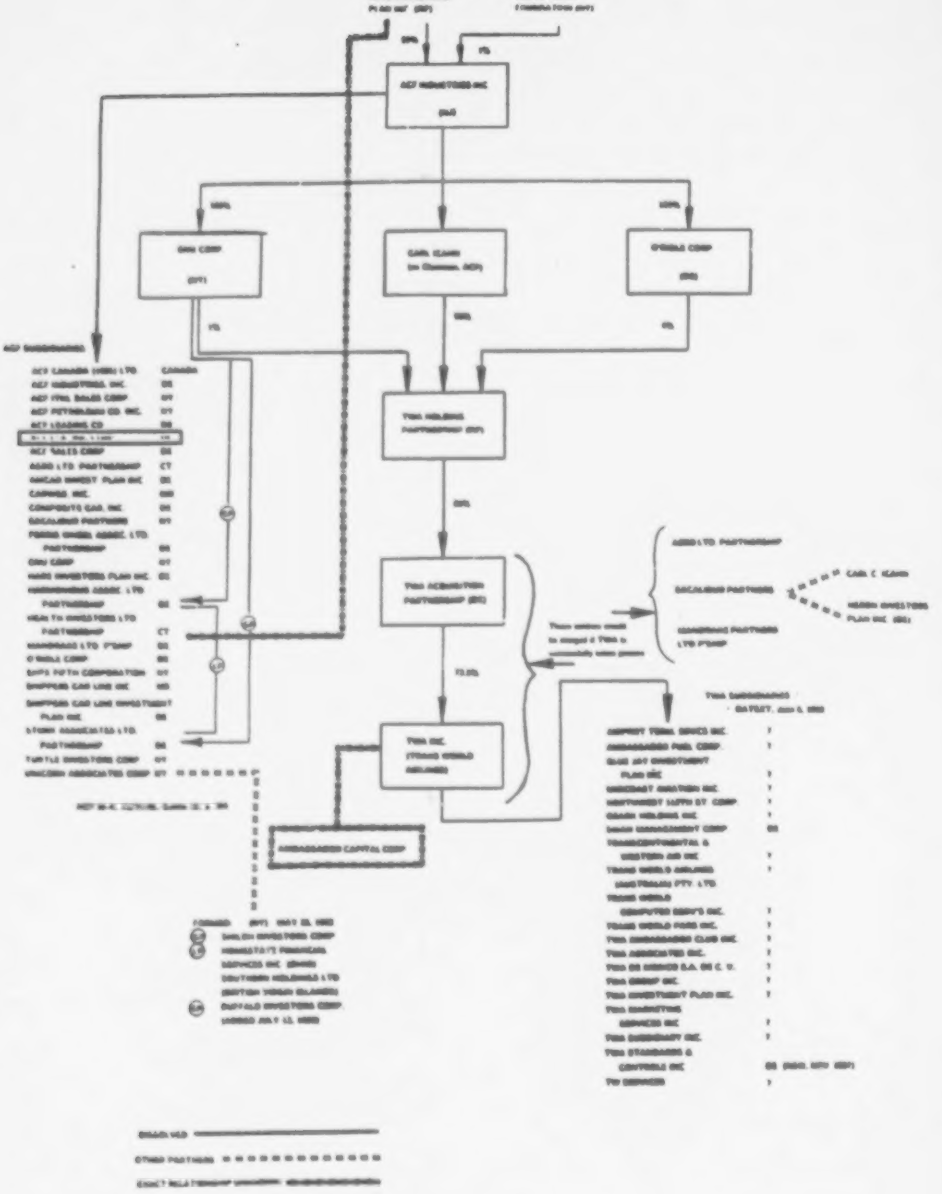
●●●●●●● IDENTIFIABLE [illegible] STOCK TRANSACTION

Beneficial Ownership

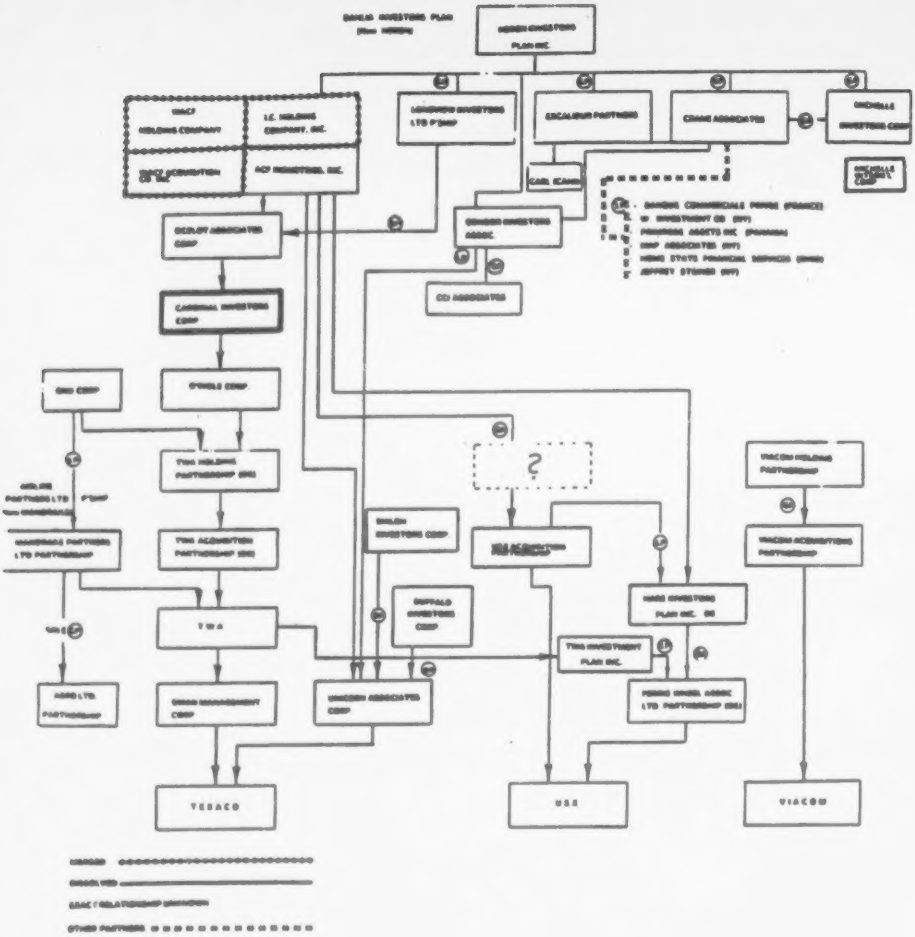
CARL ICAHN 76.84%


Carl Icahn
Alfred Kingsley
E. Schnall
AERO
EXCALIBUR
MANDRAKE
72.70%
4.10%
.047%
T W A

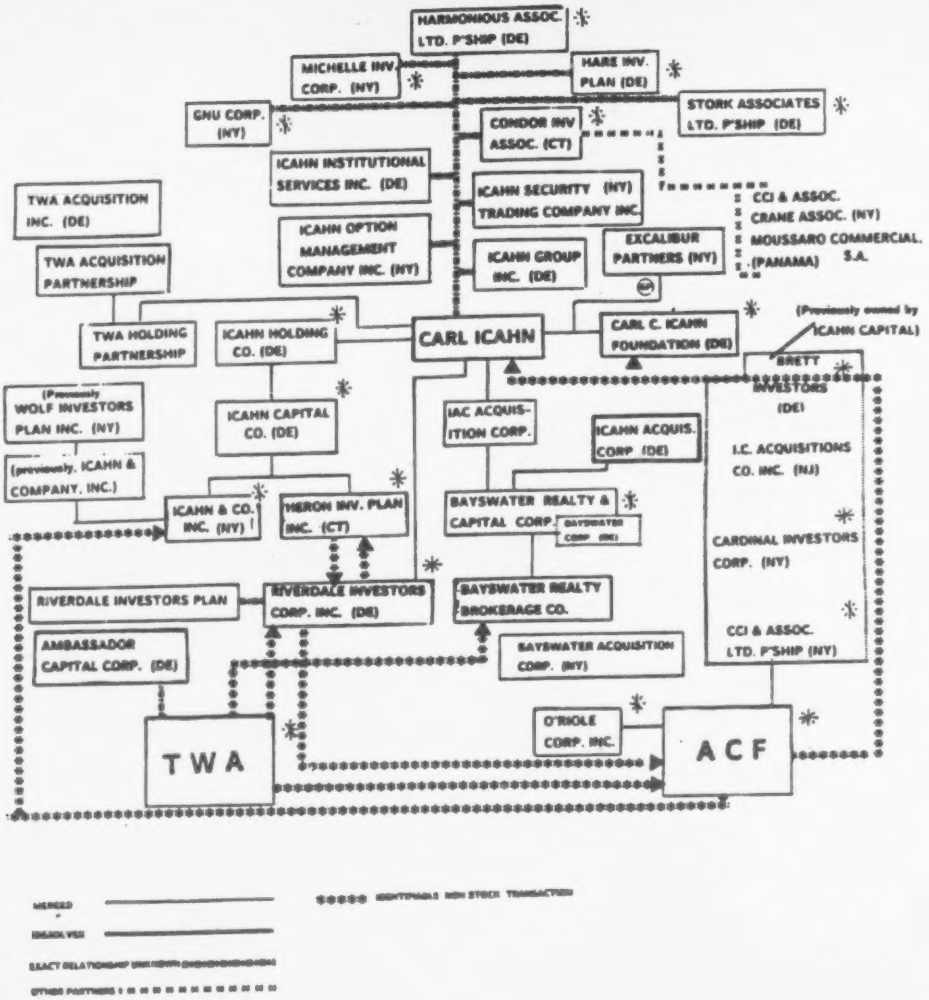
WHO OWNS STOCK?


CARL C ICAHN
CARL ICAHN
TWA INC.
73.0%
CT

WHO CONTROLS TWA ?


CARDINAL INVESTORS CORP
TWA HOLDING PARTNERSHIP (DE)
TWA ACQUISITION PARTNERSHIP (DE)
T W A
BUFFALO INVESTORS CORP
UNICORN ASSOCIATES CORP
TWA INVESTMENT PLAN INC.
VIACOM HOLDING PARTNERSHIP
VIACOM ACQUISITIONS PARTNERSHIP
CCI ASSOCIATES
TEXACO
USX
VIACOM
?

FLOW OF FUNDS FROM
T W A AND A C F
AND WHERE CARL ICAHN SIGNS *


HARMONIOUS ASSOC. LTD. P'SHIP (DE) *
MICHELLE INV. CORP. (NY) *
HARE INV. PLAN (DE) *
GNU CORP. (NY) *
CONDOR INV ASSOC. (CT) *
STORK ASSOCIATES LTD. P'SHIP (DE) *
ICAHN INSTITUTIONAL SERVICES INC. (DE)
ICAHN SECURITY (NY) TRADING COMPANY INC.
TWA ACQUISITION INC. (DE)
CCI & ASSOC.
CRANE ASSOC. (NY)
MOUSSARO COMMERCIAL. S.A. (PANAMA)
ICAHN OPTION MANAGEMENT COMPANY INC. (NY)
ICAHN GROUP INC. (DE)
EXCALIBUR PARTNERS (NY)
TWA ACQUISITION PARTNERSHIP
TWA HOLDING PARTNERSHIP
ICAHN HOLDING CO. (DE) *
CARL ICAHN
CARL C. ICAHN FOUNDATION (DE) *
(Previously owned by ICAHN CAPITAL)
BRETT INVESTORS (DE) *
(Previously WOLF INVESTORS PLAN INC. (NY)
ICAHN CAPITAL CO. (DE) *
IAC ACQUISITION CORP.
ICAHN ACQUIS. CORP (DE)
I.C. ACQUISITIONS CO. INC. (NJ)
(previously. ICAHN & COMPANY. INC.)
ICAHN & CO. INC. (NY) *
HERON INV. PLAN INC. (CT) *
BAYSWATER REALTY & CAPITAL CORP. *
BAYSWATER CORP (DE)
CARDINAL INVESTORS CORP. (NY) *
RIVERDALE INVESTORS PLAN
RIVERDALE INVESTORS CORP. INC. (DE) *
BAYSWATER REALTY BROKERAGE CO.
AMBASSADOR CAPITAL CORP. (DE)
BAYSWATER ACQUISITION CORP. (NY)
CCI & ASSOC. LTD. P'SHIP (NY) *
O'RIOLE CORP. INC. *
TWA *
ACF *
MERGED
[illegible]
EXACT RELATIONSHIP UNKNOWN
OTHER PARTNERS
IDENTIFIABLE NON STOCK TRANSACTION

Statement of Timothy Connolly
On Behalf of the International Association
Of Machinists & Aerospace Workers
Before the Subcommittee on Investigation and Oversight
Of the Committee on Public Works and Transportation
U.S. House of Representatives

September 29, 1988

Mr. Chairman and Members of the Subcommittee:

My name is Timothy Connolly and I am a Grand Lodge Representative of the International Association of Machinists and Aerospace Workers ("IAM"). The IAM is the largest union in the airline industry representing approximately 95,000 employees. I am assigned to assist IAM District Lodge 142 which represents employees on Trans World Airlines as well as Continental Airlines, Southwest Airlines, Air Midwest, Mexicana Airlines and others. There are approximately 15,000 IAM represented employees in District 142. These employees cover a wide range of job classifications, clerical, mechanical and related as well passenger service employees.

In 1985, the IAM initially and enthusiastically supported Mr. Icahn's acquisition of TWA. Indeed, the IAM and Mr. Icahn reached a historic accommodation which required IAM members to make considerable sacrifices in exchange for a commitment from Mr. Icahn to continued investment in TWA to insure its growth and viability. Unfortunately, Mr. Icahn soon violated both the spirit and the letter of our agreement. It is for that reason that we are concerned that privatization of the airline may not be in the best interests of the public and TWA employees. A case can be made that since Mr. Icahn's acquisition of TWA, he has devoted more effort and resources to his corporate raiding interests than to the operation of TWA. The IAM is fearful that the ultimate result of privatization will be to jeopardize TWA's financial structure and result in the elimination of IAM jobs.

IAM members gave up $150 million in wage and benefit concessions to allow Mr. Icahn to take control of TWA. At the time, we believed his representations to us that he intended to run the airline and expand its position in the airline industry as a modern, up-to-date entity. However, we have been repeatedly disappointed.

There is now evidence that Mr. Icahn is redeploying assets he promised to keep within TWA. To further his end of gaining total control of the company while recovering his investment, Mr. Icahn has begun disposing of crucial assets including aircraft through sale and leaseback arrangements. For instance, TWA has allowed leases to expire on three B747-100 airliners in 1986. TWA 1987 SEC Form 10-K at F-22. In addition, in April 1987, TWA sold approximately 2600 items of its ground service equipment to Desert Springs Marriott Limited Partnership for approximately $44 million. Id. at 14. (This equipment was promptly leased back). At the every least, such substantial reductions of TWA assets causes the carrier to lose revenue and profits and prevent its growth in the industry.

The IAM greatly fears that if the privatization plan is completed, TWA may well be unfit to continue as a carrier. Under the Icahn plan, TWA will have to take on an additional $1 billion at least in new and reorganized debt. Unfortunately, this borrowing will not be used for badly needed replacement of aging aircraft in one of the oldest fleets in the industry. Indeed, the average age of TWA planes has gone from the industry average of just over 12 years in 1985, before the Icahn purchase, to over 14 years. Avmark, Inc. Survey (January 1988 based on DOT Form 41); TWA 1987 SEC Form 10-K. Instead, it will finance Mr. Icahn's purchase of substantially all the shares of the TWA stock and, in addition, pay him about $469 million in cash or Cash-Equivalents (TWA Proxy Statement/Prospectus, August 12, 1988, p. xii). Privatization will increase the long-term debt of TWA to more than $2.5 billion and will drive up TWA's already high debt-to-equity ratio even higher.[1/] TWA will be left either insolvent, or so near insolvency that it will jeopardize its continued viability.

Mr. Icahn's acquisition of TWA created a highly leveraged company. However, to remain viable, TWA will have to make major capital expenditures by 1990. Indeed, Mr. Icahn promised, upon taking over the company, that he would maintain capital expenditures of at least $127 million per year.[2/] He has not done so. Moreover, the Icahn Plan imposes a heavy debt burden on TWA

[1/] Since TWA will have equity of negative $14.5 million (Proxy Statement/Prospectus at 13, 49), this ratio will be impossible to meaningfully calculate.

[2/] The company had discretion to spend no less than $70 million per year following the year in which no adjusted income was earned. Paragraph 8(a), Agreement between International Association of Machinists and Carl Icahn and affiliates entered into on or about August 5, 1985.

that makes the financing of necessary capital expenditures substantially more difficult. TWA's cash flow will of necessity be diverted to debt service. TWA will be left without even the smallest financial reserve to survive future downturns in this highly competitive and volatile airline industry.

The privatization plan envisions the devouring of the company's entire equity. TWA's equity will go from $225 million to a deficit of $14.5 million (a drop of $240 million) while its debt skyrockets to over $2.5 billion (Id. at 49).

The privatization plan also threatens the stability of labor relations at TWA. In the agreement that allowed Mr. Icahn to take control of the company, he pledged 20% of TWA's common stock to the TWA employees who were to make concessions; Mr. Icahn and the companies he controls agreed to limit their investment to 80% of TWA's outstanding common stock. Nevertheless, according to the Agreement and Plan of Merger, Mr. Icahn intends to obtain 90% of the new, private TWA, leaving the employees with only 10%. Considering that the IAM and the Air Line Pilots Association ("ALPA") materially assisted Mr. Icahn in restoring TWA to profitable operations, at least for a time, this unilateral change in the share allocation of the corporation is sure to have a substantial effect on already deteriorating labor-management relations.

Since the takeover and culminating in the privatization plan, Mr. Icahn's behavior has led the IAM, a one-time supporter, to reconsider its original position. It is becoming apparent that Mr.

Icahn may have no intention of fulfilling promises he agreed were necessary to keep TWA a healthy airline. In light of this, the IAM has been forced to seek a recision of its $150 million wage and benefit concession package in a federal court. In addition, as of January 1, 1989, TWA will be required to "snapback" wages in the amount of at least $50 million. Accordingly, Mr. Icahn's privatization plan may well seriously jeopardize TWA's compliance with collectively bargained agreements.

Therefore, we at the IAM urge the Congress to exercise its supervisory powers to institute a public investigation to determine TWA's continuing financial fitness. The Congress should assure itself that the service and performance TWA provides in public trust as a government licensee are not lost because of Mr. Icahn's extremely risky financial maneuvers.

Mr. **Oberstar**. The subcommittee will resume its sitting to take testimony next from Mr. Mark Buckstein, senior vice president, external affairs and member of the board of directors of Trans World Airlines, accompanied by Mr. Steven Souza, vice president and assistant treasurer.

[Witnesses sworn.]

Mr. **Oberstar**. We greatly appreciate your being with us. We appreciate having the statement and the documentation, the filing that's been submitted by TWA to the Department of Transportation.

I must say that it's very disappointing, more than disappointing, that Mr. Icahn chose not to be here. Three years ago or so when he was trying to arrange the financial setting so that he could acquire TWA he was most interested in appearing before the committee and getting his story told. Now that he is about to be the sole owner and mentor of this company, he does not want to personally came before the subcommittee, where he has perhaps more at stake than he did at the outset.

Now, from our previous conversations I know that you understand the financial empire very well. You've been associated with Mr. Icahn for many years, and I would like you to detail that for us. But, I must say that it's certainly shirking of a responsibility to the public and to this subcommittee to a certain extent for him not to be here.

Mr. **Buckstein**. May I comment?

Mr. **Oberstar**. Yes, you'll certainly have an opportunity to comment on that.

I think that he should understand the purpose of the hearing was simply to lay the facts on the record. We're not here on a witchhunt. We're not here to pillory anyone, and we won't. We do get the facts, though, and that is the purpose of this hearing.

I would like to have your response.

TESTIMONY OF MARK BUCKSTEIN, SENIOR VICE PRESIDENT, EXTERNAL AFFAIRS, AND MEMBER OF THE BOARD OF DIRECTORS, TRANS WORLD AIRLINES, INC., NEW YORK, NY, ACCOMPANIED BY STEVEN SOUZA, VICE PRESIDENT AND ASSISTANT TREASURER

Mr. **Buckstein**. Mr. Chairman, we reflected at great length on the propriety of various persons appearing before the committee this morning, or this afternoon. As you know, we've only known about this hearing for 3 days. Frankly, I thought that Mr. Souza and I were probably better equipped to respond to the type of questions that we expected you were concerned about. Based on my having conferred with you several weeks ago, we thought that the kind of technical detail you'd be looking into with respect to the nature of the transaction and some of the economics as they impact on TWA would be the kind of things that Mr. Souza and I probably have a better handle on and a better knowledge of than the chairman of the board.

It is not the chairman's intention to snub this committee at all or to shirk his responsibilities to the committee or the traveling public, Mr. Chairman. That is not why he's not here today. It is purely a matter of trying to supply you with whatever responses you'd like to your questions in the most effective way possible.

Mr. OBERSTAR. You are eminently qualified to answer financial questions. I've discerned that from your presentation in the past. It is only Mr. Icahn who can make commitments for the new personally owned corporation.

So, let us proceed. That behind us and said, I invite you to deliver your statement or to make an oral summary and respond, if you choose to do so, to any of the previously raised issues. We will revisit those in the course of our questioning.

Mr. BUCKSTEIN. I appreciate that opportunity, Mr. Chairman. I'd like to first address one or two brief issues, one in particular that you've just alluded to, which is the subject of the Chairman's intentions.

Mr. Icahn's intentions were fairly clearly expressed here over three years ago when he came before the Subcommittee on Aviation. There have been a fair number of I think misimpressions created about what it was that Mr. Icahn's statements were, what he represented to the committee he intended to do. I would like to set those straight by a reference to the record, Mr. Chairman.

He represented to the subcommittee that he would keep the hub in St. Louis, and that's at page 107. He's been true to that representation.

He represented that he had no intentions to dismantle the airline, and that's at page 109 of the record. He's been true to that representation.

He represented that there was no intention to sell routes, and here three years later he's been true to that intention. That's at page 113 of the record.

He also represented that he had no interest in liquidation of the airline at page 115, and he's been true to that representation as well.

With respect to his intentions and how they can be expressed here, I'm a member of the board of directors and I think I can speak for the board, which consists of six other people besides Mr. Icahn. That's what I would like to accomplish today.

I am senior vice president and general counsel at TWA, and I'm a member of TWA's board of directors. With me today is Steven Souza, vice president and assistant treasurer of TWA.

Prior to joining TWA in early 1986, I was engaged in the private practice of law in New York for more than 20 years, specializing in the securities, commodities, and investment banking industries. One of my clients since the late 1960s was Carl Icahn.

I welcome the opportunity to testify before the subcommittee today on the subject of TWA's pending privatization. This is not the first going-private transaction involving Carl Icahn in which I have been involved. The first such transaction related to a real estate company named Bayswater Realty and Capital Corp.

Mr. Icahn acquired control of Bayswater in 1979 through a proxy contest. At that time Bayswater had less than 10 employees and was engaged in the passive business of real estate investing and mortgage lending. Some who observed Mr. Icahn's acquisition of control of Bayswater speculated that he would sell off all the assets of the company, liquidate and dissolve the corporation, and distribute its assets to its shareholders, including himself. As you know, similar speculation has existed about Mr. Icahn and TWA.

In fact, Mr. Icahn expanded the operations of Bayswater, ultimately took Bayswater private, and generated a return for stockholders of greater than 400 percent. Moreover, Mr. Icahn expanded the nature of Bayswater's business in such a way that today it is actively engaged in the residential and commercial real estate construction and brokerage business, and it now employs many people in the State of New York.

The next acquisition of control by Carl Icahn occurred in 1983 and involved ACF Industries, a company engaged in the manufacture, sale, and leasing of rail cars. You've heard reference this morning to a couple of subsidiaries of ACF that were liquidated or sold off by Mr. Icahn. That was something contemplated at the time Mr. Icahn took control.

The focus, though, of ACF has always been the manufacture, sale, and leasing of rail cars. Mr. Icahn followed his pattern established in Bayswater by rehabilitating ACF, instituting meaningful cost controls, and taking the company private, while generating substantial profit for the shareholders. Today ACF's rail car business is thriving, prosperous, and employs 25 percent more employees than it did in 1983. It was not liquidated, dissolved, dismembered, or otherwise destroyed.

Moreover, ACF opened a thriving new plant in Jackson, MI. It should be noted that initially ACF contemplated closing union plants in Pennsylvania and West Virginia and establishing a nonunion facility in Texas. However, Mr. Icahn opted for new labor agreements with those unions and the continuation of the existing plants.

In 1985, when Mr. Icahn began to acquire his controlling interest in TWA, he believed it was necessary to negotiate agreements with the unions in order to help insure the viability of TWA. At that time, he made no pretensions about his goals. He clearly expressed to the unions his desire to assume control of TWA, rehabilitate the company, and ultimately take the company private, as he had successfully done at Bayswater and ACF.

In fact, had former management's projections for 1985 been accurate, the going-private transaction might have occurred in 1986, a result which was thoroughly anticipated and expected by the unions. The 1985 agreements with the unions clearly show and acknowledge the going-private concept.

However, as a result of TWA's declining fortunes, not only was the going-private transaction deferred, but Mr. Icahn found himself in a position in early 1986 of controlling the company on the verge of bankruptcy. Symptomatic of TWA's problems were the following:

First, acts of terrorism in the Mediterranean region were striking at the very core of TWA's international business.

Second, the flight attendants' strike in March 1986 crippled TWA's operations for the several months that it took to re-establish a replacement work force and to reinstitute a full schedule of flying.

Third, while all other major carriers had been building hubs at major metropolitan areas throughout the country, the best TWA had mustered was a shared hub at St. Louis.

Fourth, TWA's computer reservation system, known as PARS, was becoming archaic and outdated, as a result of TWA's inability and unwillingness to invest in PARS the sums necessary to effectively compete with computer reservation systems of the other major carriers.

Fifth, TWA's lack of capital raised the distinct possibility that, absent meaningful capital infusion, TWA would not be able to survive the first half of 1986.

Confronted with all of those problems, Carl Icahn did the only thing he knows how to do. He began an aggressive program of resolving each and every one of TWA's problems without fear for the capital that he invested or the risks attendant to his bold rehabilitation program.

In the first half of 1986, Mr. Icahn, together with the new management team that he assembled, took the following steps:

One, he negotiated the acquisition of Ozark Airlines to consolidate TWA's hub operation in St. Louis. I note here that prior TWA management had unsuccessfully attempted to accomplish that acquisition for a number of years.

Two, he negotiated the PARS joint venture with Northwest Airlines, a strong industry partner for TWA. By creating that joint venture, TWA was able to spread the cost of making PARS competitive with other reservation systems, while generating cash for TWA.

I would take a moment here and note, Mr. Chairman, that a press release was issued yesterday afternoon—and I believe there's been some coverage of that this morning—describing a joint venture between PARS and Gemini. Air Canada, and others will be participating in the PARS system, will be helping the PARS system to grow. We think that that is the kind of adventure or venture for TWA, created by Mr. Icahn, that will make PARS perhaps the strongest CRS system in America.

Third, he successfully dealt with the flight attendants' strike so that TWA was able to continue to conduct its operations in the face of a job action by a portion of the work force that was intent on destroying the airline.

Four, he arranged to borrow in excess of $600 million to fund the operations of TWA during the first half of 1986, a period when TWA was losing more than $250 million.

Fifth, he arranged for joint marketing agreements with Piedmont airlines and other smaller carriers designed to generate more feeder traffic for TWA.

Sixth, he arranged for the expansion of TWA affiliations with various commuter airlines, known as Trans World Express, designed to better feed TWA's hubs in St. Louis and New York.

Seven, he restructured TWA's routes so that TWA became less dependent on Mediterranean traffic and less dependent on its seasonal business. TWA has added a number of new international destinations, including points in Scandinavia and the first new U.S. flag service in Berlin since the end of World War II.

As a result, TWA has a more balanced year-round schedule, including extensive north-south traffic which helps immensely to offset TWA's historically slow winter season. In fact, TWA has become one of the strongest competitors in the Florida market.

Eight, he began to organize a number of subsidiaries at TWA to become involved in new activities such as a cable television company, known as the Travel Channel, and various marketing subsidiaries.

Through 1986, as all of these programs were fashioned and implemented, Carl Icahn continued to risk the almost $500 million of his own funds without any assurance that the rehabilitation efforts would prove successful. When in 1987 TWA seemed to have sufficiently turned around, Mr. Icahn initiated the going-private transaction that he committed to accomplish when he took over the company in 1985. He viewed this as a means of recovering his initial investment capital and also as the satisfaction of his commitment and obligation to TWA stockholders to generate for them a return on their investment, and as the discharge of his fiduciary responsibilities to his fellow shareholders.

However, as a result of the stock market crash of October 1987, the privatization of TWA was again deferred. In 1988 a new privatization proposal was made to TWA by Mr. Icahn. That proposal was approved by a committee of independent directors, an independent investment banking firm, and by 97 percent of TWA stockholders who are not affiliated with Carl Icahn.

This transaction does not in any way reduce Carl Icahn's commitment to TWA since he will still have in excess of $300 million invested in TWA after the privatization.

Throughout the evolution of this transaction, Mr. Icahn has continued to explore the acquisition of new airplanes, the addition of another domestic hub, the expansion of TWA's flight schedule through a combination of market arrangements, expansion of TWA's commuter system, and the addition of new destinations and routes.

Capital spending at TWA continues at levels exceeding those promised by Carl Icahn when he assumed control of TWA, and I'll be happy to explain that as we get further this afternoon, Mr. Chairman.

As with Mr. Icahn's earlier privatization ventures, TWA views this as but one step in its evolution as a more effective competitive force in the airline industry. We at TWA believe that the problems in 1985 and 1986 are behind us and that the privatization will not slow down our continuing growth pattern.

We will be pleased to answer and respond to any questions that the committee considers appropriate.

If I may, Mr. Chairman, we'd like to also——

Mr. Oberstar. Yes, Mr. Buckstein, I'm just trying to ascertain how much time we have left on this vote.

Mr. Buckstein. I was going to note, and it will take me 10 seconds to do so, sir, that we will be filing with the Department of Transportation this afternoon—hopefully, before I'm completed, I will have them for you—a further paper containing various references to some of the prior flight attendant filings. It will also contain extensive testimony that we've obtained from Ernst & Whinney, a big eight accounting firm, responding to a number of the financial issues that have been raised.

We'll try to deal with them orally today, and I'd like to request that those documents be included in the record as soon as we can submit them to you.

Mr. OBERSTAR. We will be happy to receive that information. By unanimous consent, the Chair will have permission to review and determine, by volume, the propriety of retaining all of that with the committee record.

Mr. BUCKSTEIN. Thank you.

[Received from Mr. Buckstein and retained in the subcommittee files—Ernst & Whinney, September 1988 Report: "Analysis of Certain Accounting and Financial Issues Regarding Trans World Airlines, Inc."]

Mr. OBERSTAR. The Chair recognizes the chairman of the full committee, the gentleman from California, for questions at this time.

We will recess and reconvene as soon as we possibly can after this vote.

[Recess.]

Mr. OBERSTAR. The subcommittee will resume its sitting.

The Chair recognized the chairman of the full committee, the gentleman from California, before the break. The gentleman is recognized at this time.

Mr. ANDERSON. Well, thank you, Mr. Chairman.

First, I want to say that I completely agree with your remarks earlier that we would have hoped that Mr. Icahn would have been here today.

I was listening to Mr. Buckstein's statement which gave the impression that principals don't know as much about what they're supposed to know about as staff does.

Frankly I feel that to give the impression that the principals don't know much about their business is to also cast some aspersions on us. I felt it was important that I personally be here. Although I have staff who probably know nearly as much about this issue as I do, I don't think anybody would accept the idea of our having staff sitting up here asking the questions. The same is true in the Senate or in private business.

Contrary to earlier statements, I feel that Mr. Icahn would know the answers to our questions. Unfortunately, he didn't feel that this hearing was important enough to attend.

Regardless, Mr. Buckstein, do you know of any plans, tentative or otherwise, for TWA to announce the sale of any routes or equipment within the next 6 months?

Mr. BUCKSTEIN. Absolutely not, Mr. Chairman.

Mr. ANDERSON. You do not? So you don't know what these plans are, then?

Mr. BUCKSTEIN. No, sir, I didn't mean to say that. I would know the plans because I'm a member of the board of directors of TWA. I view myself as a principal of TWA, sir. There are no such plans.

Mr. ANDERSON. In other words, there are no plans?

Mr. BUCKSTEIN. That's correct, sir.

Mr. ANDERSON. And if there were, who at TWA would know of such plans? Would you know?

Mr. BUCKSTEIN. Yes, I would, sir.

Mr. ANDERSON. In what capacity?

Mr. Buckstein. I would know that in my capacity as a member of the board of directors of TWA as well as in my capacity as a senior officer of the company.

Mr. Anderson. To your knowledge, has anyone from TWA management, including yourself or Mr. Icahn, talked with Transportation Secretary Jim Burnley about the IFFA fitness retention?

Mr. Buckstein. Not to my knowledge, Mr. Chairman.

Mr. Anderson. You have never talked to the Secretary of Transportation?

Mr. Buckstein. I have not, sir, other than through our formal filings. We have had no oral contact, to my knowledge, sir.

Mr. Anderson. There has never been any contact between anyone in TWA with Secretary Burnley on any of these particular issues?

Mr. Buckstein. Not to my knowledge, sir.

Mr. Anderson. Thank you, Mr. Chairman.

Mr. Oberstar. The gentleman from Pennsylvania?

Mr. Shuster. Thank you, Mr. Chairman. I don't have any questions at this time.

To me, it is quite important—and, indeed, I think I mentioned in my opening statement—that two years ago in the Aviation Subcommittee when we considered the TWA question, I approached those hearings with a visceral feeling against Mr. Icahn. After 3 days of hearings, I came to the conclusion—I changed my view.

The only remaining question out of those hearings, where he had made promises, was, is he going to keep his promises? As far as I can see, he has. Now will he keep his promises in the future? I don't know the answer to that, but I do know that, for one who was not in favor of Mr. Icahn, I had my views changed. As far as I can see, he has turned around a company which was on the way to bankruptcy.

I'll never forget my asking the chairman, old TWA management, when they had last paid a dividend to their stockholders, and his reply to me was that he didn't know since it had been so many years.

So from everything I've been able to see, Mr. Icahn has turned the company around. It has a reasonable chance of continued success. As far as I can see, he kept his promises.

Based on that, I still get nervous when I see financial high-flyers begin to put together enormously complex financial deals, but that's part of what finance is all about. So I suppose I express these views simply to let the committee know where I'm coming from at this point in time.

I would welcome any evidence to either support or contradict what I've said. Thank you.

Mr. Oberstar. Mrs. Johnson, the gentlewoman from Connecticut?

Mrs. Johnson. Thank you very much.

You may have addressed this earlier in the questioning and, if so, just please let me know. I've been, unfortunately, unable to be here all the time.

I am concerned about this issue of capital expenditures—how much you've put into new equipment over the last couple of years, how much other airlines have put into new equipment, how your investment compares this year to last year, and to 2 or 3 years ago; that kind of information.

What would you say about TWA's commitment to current service and its future as a reflection of its capital investments?

Mr. **Buckstein**. Congresswoman Johnson, you heard the testimony earlier today that last year TWA expended, I think the number was $77 million, on capital expenditures. What that fails to take into account are the number of planes that were acquired by TWA through leasing arrangements, which in my view is merely a financing alternative to the purchase and acquisition.

If you add on the $200-some-odd million in value of those planes, you're looking at capital expenditure numbers which are fairly significant.

Moreover, the TWA board in June of this year determined in principle to enter into dramatic purchase arrangements before the end of the year to acquire new narrow-body planes. We expect that commitment to be of a magnitude of up to 60 planes. We expect it to be in the range of $1.2 to $1.5 billion in commitment. We have been in extensive negotiations with three aircraft manufacturers. We do not intend to rush into that acquisition. We view it as significant, and we will not rush into it just because one of their union representatives may feel it's important that we do that right away.

We feel it's important that we modernize our fleet as well, and we will, and we will do it in a proper and appropriate time and consistent with our board's mandate that we accomplish that. We believe that we are well on the road toward dramatic capital expenditures.

We just at a board meeting within the last 30 days have approved capital expenditures involving extensive rehabilitation, I guess I'd call it, of our baggage conveying system in St. Louis. Those of you who travel through St. Louis know that we can probably use it there.

We're about to enter into a fairly extensive commitment of a magnitude of about $15 million to do a similar baggage overhaul at JFK Airport in New York.

Those are the types of steps that we think we continually take.

Mrs. **Johnson**. Thank you.

How large is your fleet at this time, how many planes?

Mr. **Buckstein**. Approximately 220 planes.

Mrs. **Johnson**. Thank you.

Thank you very much, Mr. Chairman.

Mr. **Oberstar**. Thank you.

Mr. Buckstein, you cited the commitments that Mr. Icahn made. Specifically, the four commitments were: he would keep the hub in St. Louis, he wouldn't dismantle the aircraft, he wouldn't sell routes, and he wouldn't liquidate the airline.

He made another commitment, not ironclad to be sure, but he certainly put on the table at the committee hearing a statement in which he indicated $150 million a year in a capital expenditure program. His complete context was referring to a figure of $750 million a year, cited as TWA's capital expenditure program.

He said, "I figured that was, according to their most optimistic plan or their biggest plan. . . . I think it was $250 million a year." I'm not quite sure what he's trying to say there. It's not clear.

Ichan continued, "I have said that I don't know that we would want to go into that big of a capital expenditure program, but I just mention to you about $150 million a year. So that $150 million a year could be covered and also any interest that we had in amortization for that matter."

Then even if you bought these planes, by the way, you would only buy them if your airline was doing well. If it was doing well, you certainly could finance part of that. I don't think there's anything wrong with doing that.

Now whether the committee took that to be a commitment to invest $150 million a year as a flat out commitment or not, I don't know, but it was certainly a very persuasive number and a very persuasive context.

He took a $750-million expenditure program, ratcheted it down to $150 million, and then, to the best of my knowledge, that $150 million has not been spent. There's been a capital leasing program for those 15 aircraft; is that correct?

Mr. **Buckstein**. The aircraft have been acquired through a capital leasing program; that is correct. We view that as a financing alternative to the purchase.

Mr. **Oberstar**. Have they been obtained on a capital lease or an operating lease?

Mr. **Buckstein**. Yes, Mr. Souza perhaps could answer that question.

Mr. **Souza**. Just to go over in a little more detail what Mr. Buckstein was talking about earlier in terms of aircraft that have been acquired by TWA, within the 12 months from June 1987 to June 1988, TWA acquired 11 new aircraft, 10 MD-80's and one 767, having a total value of approximately $300 million.

It was referred to before that those were all on operating leases. In fact, four of those are capital leases. They are 18-year leases. The other seven aircraft are for lease terms varying from 8 to 10 to 15 years. So while they do qualify under accounting treatment as operating leases, 8-to-15-year leases are, indeed, a significant commitment. I would hardly liken it to renting a car.

In addition, during 1987 TWA had 13 MD-80's which were three and four years old, had been acquired in 1983 and 1984 under leases which originally were only five years. There were, therefore, one to two years left on the lease of these 13 aircraft. In 1987 the leases on those aircraft were extended for an additional 12 years, and those were treated as capital leases, resulting and reflected on our financial statements, capital expenditure of over $200 million.

In addition, in 1987 TWA renewed the leases for five years on 20 of its 727-200 aircraft, a deal worth over $100 million.

As you know, in 1986 when TWA acquired Ozark Airlines, it acquired quite a number of aircraft along with Ozark, some of which were older, but included in that Ozark fleet were four MD-80's having a value of perhaps $90 to $100 million.

Those are the kind of aircraft commitments that have been made since the beginning of 1986 through the middle of this year.

Mr. **Oberstar**. Reviewing your reference to the 11 new aircraft, 10 MD-80's and one 767 are on 8-to-15-year leases. Do those have balloon payments?

Mr. **Souza**. No, they are level.

Mr. OBERSTAR. Level year payments?

Mr. SOUZA. Level monthly payments, yes.

Mr. OBERSTAR. And then the 13 MD–80's were renegotiated to 12-year capital leases?

Mr. SOUZA. Right, those were operating leases. Those were converted to capital leases.

Mr. OBERSTAR. All right. What are your estimates of new aircraft requirements for TWA in whatever projection period you make, one to five years, or what sort of a projection period do you look to in replacement or addition of aircraft?

Mr. BUCKSTEIN. We're looking to approximately a five-year period, and we're looking to the acquisition of approximately 60 planes.

Mr. OBERSTAR. Now you cited 50 to 60 aircraft in a range of $1.2 to $1.5 billion in cost. What are the current plans to acquire those aircraft, on operating lease or on capital lease or an outright acquisition?

Mr. SOUZA. The financing decision is not one that any airline would make until several months prior to delivery, based on its tax position at the time and a number of other financial considerations that normally comprise a lease/purchase analysis.

I would say that our desire, if aircraft were available for purchase or for long-term lease, would be to either purchase them or commit to capital leases of 18 to 20 years.

Mr. OBERSTAR. What type aircraft do you envision acquiring? What is the mix of that 50 or 60 aircraft?

Mr. SOUZA. We are looking primarily right now at modernizing our narrow-body fleet, adding to our narrow-body fleet. The aircraft that we are looking at are MD–80's, Airbus A–320, Boeing 737, and Boeing 757. Those are the aircraft we're looking at right now.

Mr. OBERSTAR. For a while it's going to be hard to acquire MD–80's, as I understand it, since at least one airline has a pretty substantial number of the production aircraft tied up.

Mr. SOUZA. One of the difficulties that we're having right now is that most of the manufacture order positions have been taken by the operating leasing companies. It is very difficult to get delivery of new aircraft until 1992 at this point, and we don't really want to take delivery of those planes from the operating lease companies. We feel we can get a more economic deal by purchasing the aircraft direct from the manufacturer or entering into long-term leases.

Mr. OBERSTAR. It's been alleged, and you heard the testimony earlier, that TWA has the oldest fleet in the airline industry, even with the recently acquired aircraft. I'd like your response to that. Do you have concerns about that? Is that accurate? Do you have any documentation you'd like to submit for the committee?

Mr. BUCKSTEIN. The age of our fleet is, as suggested in our filings with the Department of Transportation, is approximately the same as the age of the fleets of Northwest and United—Northwest and Pan Am, excuse me.

As this acquisition program becomes agreed to and implemented, it will reduce the average age of our aircraft from in excess of 14 years to approximately 12 years. However, we also believe that the age of the aircraft is not necessarily the sole factor in determining the safety of an aircraft. We believe our aircraft is completely safe and we don't think the mere fact of their being 14 years old on average necessarily creates any issue with respect to their safety.

I suggest that if you were to ask the FAA their views, they would probably express the same views.

Mr. OBERSTAR. I don't ask the question for the purpose of inquiring about safety. The matter of aging aircraft is a subject that we will cover in a future hearing, and we already have an inquiry underway with respect to the general question in all aviation. It's a matter of quite some dispute, as you may well know, of the useful life of an aircraft. We're not going to discuss that.

What we are interested in determining is the ability of the newly-configured airline to compete, to grow with the business, and to stay competitive.

Mr. BUCKSTEIN. If you'd like to talk about meeting competition, it may be worthwhile spending a moment dealing with the issue that was raised this morning about TWA's share of transatlantic traffic. You heard this morning testimony that suggested that TWA's market share is declining. Well, the first thing I think that needs to be recognized is that there are a number of additional carriers now engaged in transatlantic traffic that hadn't previously been engaged in that traffic.

More significantly, statistics clearly reflect that our market share or our share of the market is increasing at a faster rate than the market share of other carriers. For example, if you compare statistics, numbers of passengers enplaned in transatlantic traffic, January to June 1987 compared to January to June 1988, you'd find that TWA's number of enplanements increased by over 15 percent while all other carriers enplanements for like periods only increased by 11 percent. So we think we are growing fairly dramatically. In fact, we are happy with our growth rate.

Mr. OBERSTAR. Well, that's helpful to have that, but the question is: How is TWA in its privatization configuration going to finance the purchase of the needed new aircraft when we have various allegations about the financial status of this new company of being somewhere in the neighborhood of $200 million negative net worth?

Mr. SOUZA. I'd like to answer that question, if I may.

You've heard the figure this morning and it is a figure which appears in our pro forma financial statements that post-going-private TWA's interest expense will be $466 million per year. On a gross basis, that is true. However, there are a number of debt instruments there where interest is at our option not payable in cash, but payable in kind. That also fails to reflect the fact that we have significant interest income on our portfolio investments that is an offset to the gross interest expense.

We and Ernst & Whinney in the analysis that will be attached to our filing with the DOT today have performed an analysis of TWA's net interest expense, net cash interest expense, on a pro forma basis. When those adjustments are made, the cash interest expense is $243 million per year.

We are currently at approximately that level in our operating profits and, given that we have $200 million per year in depreciation, we, therefore, have a positive cash flow of $200 million per year.

We also have——

Mr. **Oberstar**. That's generated by interest income that you just cited; is that correct?

Mr. **Souza**. From the $1 billion in cash and marketable securities that we have. We would expect, and we have in the past, generated approximately $100 million a year from those investments. That must be netted against the gross interest expense.

Mr. **Oberstar**. Will that transfer or carry over to the newly-configured company?

Mr. **Souza**. Yes.

Going a bit further, we also heard a figure this morning that post-going-private TWA's average interest expense will be 17.9 percent. My calculation of the same figure indicates 14.8 percent. It was not very difficult for me to see where the 17.9 percent erroneous figure was calculated. It was simply a matter of including in the numerator of the fraction the new interest expense but excluding from the denominator of the fraction the new debt involved. It was simply a matter of dividing the new interest expense by the old debt level rather than the new debt level.

Indeed, it does not make any sense that one could have average interest expense of 17.9 percent when no single debt instrument has an interest rate of 17.9.

Mr. **Oberstar**. Does your calculation of interest rate change the monthly interest payment figure?

Mr. **Souza**. No, it does not.

Mr. **Oberstar**. So interest rate is really of any great significance. The real question is, how much money do you have and not how much interest are you paying?

Mr. **Souza**. That is correct.

Mr. **Oberstar**. All right. Now I want to discuss the marketable securities that are cited in your claim that TWA will emerge from the privatization effort with approximately a billion dollars in cash and marketable securities. Are those marketable securities of TWA?

Mr. **Souza**. Yes, they are.

Mr. **Oberstar**. Can they be transferred by Mr. Icahn to some other purpose?

Mr. **Buckstein**. If you are referring to the holding company that we heard referred to earlier today, let me deal with that issue in two ways. One, there's absolutely no present contemplation of creating that holding company that was referred to in June. There are no present plans to do it. We are not working on it, do not contemplate accomplishing it.

Moreover, in the event that that holding company ever were something that someone contemplated structuring, you can't transfer assets out of TWA, marketable assets, without a replacement of that by marketable assets. We have debentures and trust indentures which restrict what we can and cannot do with our assets. We have agreements with our unions which restrict what we can and cannot do with our assets.

There never was a contemplation of transferring out marketable securities from TWA to a holding company without giving to TWA marketable securities. In any event, that's not something we're presently planning.

Mr. **Oberstar**. All right, that's helpful to know. Are there filings that TWA would have to make with the SEC or with DOT or with any other Government entity in the event of transfer of such marketable securities and replacement thereof by TWA?

Mr. **Buckstein**. If we were going to create the holding company that we had referred to, there would be a number of filings, Mr. Chairman.

If I may spend a moment dealing with the subject of filings, you heard this morning some testimony that suggested that TWA, now that it will no longer have its minority stockholders, will no longer have its filing obligations as it did prior to the privatization transaction. That's absolutely false.

We will have a series of preferred shares that are traded on the New York Stock Exchange. We will have a number of publicly-traded debentures. We will still be subject to the reporting requirements of the Securities Exchange Act of 1934. We will be filing Forms 10-K and Q and periodic reports, and we will be subject to all of the same reporting responsibilities that we had prior to the privatization transaction.

Mr. **Oberstar**. Referring to the types of transactions you just mentioned, will any future financial transactions on the part of TWA be publicly filed?

Mr. **Buckstein**. That's correct, Mr. Chairman.

Mr. **Oberstar**. They will be publicly filed with the SEC?

Mr. **Buckstein**. That is correct, Mr. Chairman.

Mr. **Oberstar**. And subject to public scrutiny?

Mr. **Buckstein**. That is correct, sir.

Mr. **Oberstar**. It surfaced in earlier testimony that there will be a $200 million shortfall after privatization, a matter that we just covered. The numbers cited at that time, which I noted were payments of $865,369,000 against a cash flow, and these are 1987 numbers, against a cash flow of $662,673,000.

Now you have just explained, Mr. Souza, that this difference in numbers is covered by interest accruing to TWA from securities that it has invested.

Mr. **Souza**. I'm not sure of the source of the numbers that you talked about for 1987. What I was referring to is TWA's cash flow on a going-forward basis.

Looking at 1987 pro forma interest expense, the calculation I was going through was that there was a gross interest expense of $466 million. That includes $56 million of interest on an item labeled in the balance sheet "note to affiliate." That is essentially the $468 or $469 million that is going to be distributed to the Icahn entities either as cash or cash equivalents. I might add that after that distribution of $469 million there will still be the billion dollars. When we refer to the billion dollars in cash and marketable securities, it will in TWA post-privatization. We're talking about a billion dollars after that cash or cash equivalent has been distributed to the Icahn entities.

Therefore, it is for pro forma purposes only that that $469 million note is shown on the balance sheet. It was really never intended that a note be issued. If that note is not issued, $56 million of interest disappears from your figure of $466 million.

There are then two series of debentures which at TWA's option interest may be paid in kind rather than in cash, and the total interest on those two debenture issues is approximately $70 million, further reducing the $410 million to approximately $340 million.

Our pro formas will also show investment and interest income of approximately $100 million net of the $30 million in dividends that is paid on the Texaco stock, if it is the Texaco stock that is transferred to Mr. Icahn in lieu of cash.

Netting that $100 million approximately from the $340 million that I'm now down to gets you to a cash interest expense figure of $240 million.

I might add that this analysis is also set forth in the report of Ernst & Whinney. Ernst & Whinney also addresses the claim by IFFA that there will not, in fact, be $1 billion in cash and marketable securities in TWA post going private, and their conclusion is that there will, in fact, be $1 billion in cash and marketable securities in TWA post going private and that these are very liquid assets and that TWA would have the highest ratio of any airline of liquid assets to total assets, which is very important when one is considering a company's ability to pay its debt, meet its debt service and to make capital expenditures, is the liquidity of its assets. By that measure, TWA would have the highest liquidity still in the industry and would also have a very favorable ratio of liquid assets to cash interest expense, the cash interest expense being the $243 million figure that I just referred to.

Mr. **Oberstar**. Would you further explain the liquid assets to which you just referred? I think that's a very important figure for us to understand.

Mr. **Souza**. I am referring to cash, literal cash, Texaco stock. Even if half of Texaco stock is distributed to Mr. Icahn, there will still be half remaining in the company. The billion dollars of cash and marketable securities that I'm referring to post-going-private refers to cash, Texaco stock, and some other securities, and our interest in USX.

Mr. **Oberstar**. When you describe those as liquid assets, they are stocks, securities, whatever, that can be converted into ready cash to deal with whatever the airline needs?

Mr. **Souza**. Yes, they are. In fact, all but the USX investment are shown on the balance sheet as current assets, on one line as cash and cash equivalents, which is literally cash and overnight deposits with the bank; the second line being marketable securities, which in our case is comprised primarily of Texaco securities.

Our investment in USX is held through a partnership. For that reason alone, it is shown as a noncurrent rather than a current asset, but this does not mean that it is not a marketable security or a liquid asset. Ernst and Whinney points out in their report that, although because the interest is held through a partnership it must be classified as a noncurrent asset, it still meets the definition and it is, indeed, a marketable security and a liquid asset.

Mr. **Oberstar**. All right. The concern of this subcommittee is the future of this airline's ability to meet its demands in the marketplace which will be to have adequate aircraft, continuing to be a vigorous competitor, and replacing or adding new aircraft as the situation demands.

How do you intend to finance the number of aircraft that we've talked about, which numbers 50 to 60 over a 5-year capital investment period? From what sources? Would it be from those cash and marketable securities?

Mr. Souza. We expect to enter this period, as I said, with $1 billion in cash and marketable securities and also to be generating $200 million of cash flow per year. If we wanted to, we could simply lease all these aircraft. They could be put on long-term leases with no cash required to be paid upfront. There would be no cash paid upfront in that instance.

One does not add aircraft to one's fleet if you don't expect that they're going to generate incremental revenues.

Mr. Buckstein. In addition to which these are going to be newer, obviously more modern and fuel-efficient aircraft that will generate substantial fuel savings compared to some of the older planes in TWA's fleet, and we expect and we've done computations at great length which suggest that there should be substantial profits in each of those planes that will more than enable us to service whatever debt or lease obligations we incur in order to acquire them.

Mr. Oberstar. Certainly that's an important factor and an important calculation.

Is any part of Mr. Icahn's other financial empire available or committed to the future success of TWA? Let me explain that further. In a worst-case scenario, some of which was discussed three years ago in that 1-day hearing, if all things go bad and you don't make that $200 million cash flow and you need the aircraft to be competitive, where's he going to get the money?

Mr. Buckstein. Let's talk for a moment about other assets of Mr. Icahn and other parts of what you've described as Mr. Icahn's empire.

I heard a reference this morning in some testimony to the way in which Mr. Icahn was going to be generating for himself lots of money beyond the distributions that flow from the privatization transaction. In fact, one of the things that I saw reflected in the flight attendants' papers was a suggested cash flow to Mr. Icahn based upon a lease to TWA of facilities owned by Mr. Icahn. That lease is at substantially less than fair market value. We have had intensive appraisals done of that lease and we will, TWA will, realize $25 million in savings over the 10-year life of that lease by virtue of what I would describe as a friendly lease from Mr. Icahn-controlled company to TWA. That's an example of the kind of relationship that's evolved between Mr. Icahn and TWA.

Mr. Icahn, as you are also aware, has left his investment in TWA for a prolonged period of time. After this privatization transaction is completed, he has a very substantial stake in this company. I can't commit for what he will and will not do, but history suggests that he'll do whatever is necessary to support his investment and insure that it becomes profitable.

Mr. Oberstar. We are on the second call of a vote. Let me just ask some other technical questions I want to proceed to when we come back.

What is the advantage of privatizing TWA as compared to operating it as a publicly owned corporation?

Mr. BUCKSTEIN. Let me respond to that question in several ways because I'm not sure the proper question is what is the advantage; I think the question might be what is the disadvantage, but let me deal with it both——

Mr. OBERSTAR. I assume this gentleman is a financial genius; he knows what he's about. Why in his judgment is it a better financial move? Why is it a better move from the standpoint of operating an airline to operate it as a privately held corporation than to do it as a publicly held corporation?

Mr. BUCKSTEIN. The issue of private or public, Mr. Chairman, is not the key issue. The issue is the financial feature that flows from the privatization. The financial features that flow from the privatization essentially, for Mr. Icahn anyway, are two. One is that he recaptures from TWA approximately what his original investment was in TWA beginning in 1985.

The second feature of what this privatization transaction does is reaffirm the capital formation process for Mr. Icahn and his enterprises and ventures. What it does is say that his commitment to shareholders to rehabilitate a company and risk his money in order to generate a return for those shareholders is a commitment that he's fulfilled. That's something he's viewed as his fiduciary responsibility to stockholders.

More importantly, what it tells shareholders is that in the future, if either TWA or another enterprise in which Mr. Icahn has an interest were to seek to go to the capital markets to raise equity capital or other capital, it tells people that this is a man who is a man of his commitments and who has taken those risk capital funds that Americans have put into the company and generated substantial return for them. That sort of track record will enable him to continue to build companies in the way he's done with TWA and ACF and Bayswater before.

Mr. OBERSTAR. It helps him recapture his original investment.

Mr. BUCKSTEIN. That's correct.

Mr. OBERSTAR. It gives him some additional maneuvering room in capital formation. How does it benefit the airline? It benefits the stockholders to which he made some commitments, and he's fulfilling those commitments through these financial maneuvers. What is the benefit to the airline?

Mr. BUCKSTEIN. I suppose the benefit to the airline is about the same as the benefit to an airline when any other airline declares a dividend and pays that out to its stockholders.

The airline will have less in it in the form of liquid capital, although it will have a billion dollars more after the transaction than it did before. I think the issue is, has Mr. Icahn in proposing this privatization transaction in any way impaired the airline's ability to go forward and to continue to grow? We at TWA, including its board of directors and its independent investment bankers, have concluded that it in no way impairs the ability of this company to grow.

Mr. OBERSTAR. Does it make it a stronger airline? As an airline, does it make it a stronger competitor after privatization than before?

Mr. **Buckstein**. I can make an argument out, and it's been suggested before, that it might, although I'm not sure it's true. The argument might go that with Mr. Icahn having repatriated his original investment, he might be more inclined to use TWA much more as an airline than something that was an airline as well as a vehicle to expand into other areas. He might then use his repatriated investment to go into other investments outside of TWA. I'm not even sure that's positive, quite frankly, but that's certainly a possible implication of the transaction.

Mr. **Oberstar**. Thank you.

We will take a brief recess for this vote.

[Recess.]

Mr. **Oberstar**. The subcommittee will resume its sitting.

Just a few more questions, Mr. Buckstein.

Mr. **Buckstein**. Yes.

Mr. **Oberstar**. I appreciate your candor and the detail of your response and of Mr. Souza's as well.

I mulled over your response on aircraft during the break, and on thinking this through I don't see any plans for new wide-bodies for the future. You talked about MD–80's, A–320's, and 757's, 737's.

In this new transaction, Mr. Icahn has asserted a value to the international route system of TWA of $375 million; is that correct?

Mr. **Buckstein**. Yes, sir.

Mr. **Oberstar**. You have 50-some aircraft, according to documentation that you've filed: 21 747's and 35 L–1011's, 56 aircraft in the wide-body category.

What are the implications of those figures; in other words the fact is that you don't have any wide bodies in the plan. Do you anticipate that the existing 56 aircraft are sufficient to serve the international route system of TWA? Do you not anticipate any expansion in that segment or, worst-case scenario, is this part of a plan that's raised the point that was raised earlier? I'll let you respond to it, suggesting that this is one of those assets to be sold off?

Mr. **Buckstein**. The fact that we are currently focusing our aircraft acquisition plans on narrow bodies doesn't mean to suggest, Mr. Chairman, that we don't recognize that we will hopefully need to expand our wide-body fleet as well. That's a function of the growth of TWA over the next several years and what we do with respect to our international routes. We have absolutely no plans of liquidating any of our international routes.

You may be interested to know, Mr. Chairman, that 1 and 2 years ago other carriers made offers to TWA to purchase some of our international routes. We did not encourage those offers. We turned them down.

You heard a reference to Chicago-London this morning. The reason that you probably heard that reference is because I believe there are other carriers that would very much like to have our Chicago-London route. We have no intention of selling it.

We do not have concrete plans yet for expanding our wide-body fleet, but we expect that as soon as we complete the plans and commitments for the replacement and modernization of the narrow-body fleet, we'll move on to the next part of the growth program.

Mr. **Oberstar**. In your view, then, if I interpret further what you are saying, any growth or any addition of aircraft to serve international routes will depend on growth in that market. Additionally, if you're going on a 5-year plan, anything that may happen in that 5-year plan to encourage or give you an opportunity for expansion of the international operations would have to depend on what evolves in the market that you do not see today?

Mr. BUCKSTEIN. No, there are no concrete plans for the immediate need for more than the 56 wide-body planes that you've noticed we have in our fleet. That's not to suggest that there are not plans on the drawing board to attend to consider additional international routes, and when, as, and if we are successful in obtaining international routes, we will at the same time be looking at methods of servicing those routes.

So there are no concrete plans on the drawing board at the moment, if that's what you're asking, with respect to the expansion of our international routes.

Mr. OBERSTAR. Additionally, you flatly disclaim any intention to liquidate those international routes.

Mr. BUCKSTEIN. Not only is that absolutely correct, sir, but if you look at what we have done in 1988, that should become clear. We think the inter-German service that we have inaugurated this year is a very exciting service for TWA. It's the first additional competitive service out of Berlin since World War II, and we're very excited about it. That's the kind of change in strategy that TWA's been involved in.

We've added a couple of northern-European destinations. We expect to continue to do that.

Mr. OBERSTAR. Tell me, why was it necessary to put a value on the international route system in these filings when no such specific breakout of that figure appeared in any earlier financial presentations by TWA.

Mr. BUCKSTEIN. I think to understand the answer to that question, it's important to focus on the purpose of a merger proxy statement. As I think Congressman Shuster was suggesting earlier, it is clearly a document designed to disclose to shareholders all of the implications of voting for the going-private or voting against the going-private transaction.

In order to adequately explain to shareholders what it is that they're voting on, it's important they know as much as they can about the company itself. That means not only clearly discernible and definable asset values, but it means also those things which might be known as off-balance sheet asset values but which a shareholder should be aware of and should recognize in trying to decide whether to sell his shares effectively to the company.

If you listen to the dialogue that took place in the Delaware Chancery Court two weeks ago, where there's an action pending against TWA by shareholders who claim we are paying too little in the going-private transaction, you'd understand, I think, more about what I'm suggesting. That is that it's important in a merger proxy statement and in a going-private document like this one to try to focus on every possible asset that may not be readily discernible from a quick review of a balance sheet. That's why that's there—to tell stockholders there may be other things here of value that you may not be aware of; you should know about that before you decide to sell your interest in the company.

Mr. OBERSTAR. At the same time it raised questions among those who are critical of Mr. Icahn's privatization plan and raised suspicions that this was the first step toward dismantling and liquidation of the airline.

Mr. BUCKSTEIN. I understand that that may be what has occurred, although I'm not quite——

Mr. OBERSTAR. That's my perception of what has occurred as a result of that separate listing.

Mr. BUCKSTEIN. Mr. Chairman, I think that's what they're saying, but I don't really think they mean that. I have heard since I came to TWA in January of 1986 on a regular basis, "We know what Icahn's going to do. He's going to sell off assets. He's going to liquidate routes. He's going to sell planes. He's going to sell the Kansas City maintenance base. He's going to do all those horrible things," and I keep hearing that constantly.

There is absolutely nothing in the record to suggest that there's any kernel of truth in that. He has not done that. I think, as the record bears out, what he's done is build this airline, so that while there's a suggestion that maybe this indicates an intent to sell off that asset, I can assure you that is not a subject that has been discussed at the board level. It is not a plan we have. We have absolutely no intentions of selling off our international routes.

As I suggested earlier, we——

Mr. OBERSTAR. You speak for Mr. Icahn on that matter directly?

Mr. BUCKSTEIN. Yes, I do, sir.

Mr. OBERSTAR. Why, if the purpose was privatization, why did Mr. Icahn stop at 90 percent, not acquire 100 percent?

Mr. BUCKSTEIN. Mr. Icahn wasn't going to be able to acquire 100 percent whether or not he went private now. We have a commitment to the machinists and to the pilots to insure that by the end of this year they receive through ESOP's 10 percent of TWA. So it wasn't a matter of Mr. Icahn being able to acquire 100 percent of the company.

In fact, I know that at one point in time Mr. Icahn had even suggested, I think it was to Captain Ashwood or some of the other negotiators, if you don't want an interest in TWA because you're uncomfortable, perhaps we ought to talk about our giving you cash in lieu of your ESOP. That goes to an issue that I think is worth spending a moment on, Mr. Chairman.

That is the subject of TWA's willingness to discuss this plan with its unions and negotiate its terms with its unions. We have been willing to do that since the beginning.

Captain Ashwood said to you earlier today that he didn't learn about this transaction and the terms of it until mid-August. That is absolutely not true. In early July, in response to repeated prodding by the pilots, we sent a summary to the pilots of the materials contained in the draft proxy materials as they existed at that time. We were most interested in having the pilots know as early as possible what the terms were.

The day before our stockholders' meeting I engaged in negotiations and discussions—"negotiations" is probably not a fair word for reasons I'll explain in a moment—discussions with some representatives of the pilots. That evening it became very clear, and they said to us, "We're not willing to negotiate anything. The only thing we want is for Mr. Icahn not to go private. If he's willing not to go private, then we'll sit down and talk to you."

Our posture was, aren't there other things we can negotiate or discuss? Their response was, "No, there's nothing to discuss."

The meeting ended and the next morning we were served with a summons and complaint.

We have been willing and interested in discussing the terms of the ESOPs with the pilots and the machinists since August and earlier and, in fact, are hopeful that we will be able to continue to do that.

Mr. OBERSTAR. All right. Does the gentleman from Pennsylvania have any questions? The Chair will have a few more questions.

Mr. SHUSTER. Just one line of questioning. How many employees did TWA have when Carl Icahn got control of the company?

Mr. BUCKSTEIN. At the end of 1985, TWA had 28,700 employees including approximately 600 employees who were engaged in our PARS operation, our computerized reservation service.

Mr. SHUSTER. How many do you have now?

Mr. BUCKSTEIN. Today, as of the end of June, we have in excess of 31,000 employees. So if you factor out PARS, we've increased our work force from approximately 28,000 to approximately 31,000.

Mr. SHUSTER. What about Ozark? How does that fit in those numbers?

Mr. BUCKSTEIN. If you'll give me a moment, sir, I think I have that information.

I'm sorry, I don't think I have it handy. I'll have to find it for you.

Mr. SHUSTER. Just looking at these two numbers then, you've had what, a 10-percent growth over the 2½ year period?

Mr. BUCKSTEIN. Yes. Some of that is Ozark employees, sir.

Mr. SHUSTER. How much of it? How many employees does Ozark have?

Mr. BUCKSTEIN. I believe the number was somewhat in excess of 2,000.

Mr. SHUSTER. So you're looking maybe at 1,000 increase without Ozark.

Mr. BUCKSTEIN. We'll submit the precise figures for the record after we're finished.

[The following was received from Mr. Buckstein:]

TWA Employment

	Employees
January 1, 1986 (Icahn acquisition of TWA)	28,700
January 1, 1987 [1], (After Ozark merger with TWA)	29,600
June 1988	31,086

[1] From June 1986 TWA employment was reduced by a flight attendant strike. In addition, some 600 employees transferred to a separate subsidiary, the PARS Company.

Mr. SHUSTER. The point is there has not been a decimation of employment at TWA? There has not been a substantial decline in employment at TWA? There, in fact, has been some increase?

Mr. BUCKSTEIN. That's correct.

Mr. SHUSTER. Modest, perhaps, in fact during these troubled times.

Mr. **Souza**. I might say that I've been with TWA for 11 years. Over the past couple of years there has been modest growth. There has been growth in the employment level at TWA.

I was with the company in 1979 when we had approximately 39,000 employees. That number subsequently fell to almost 25,000 over the course of the years. So TWA is now in a mode of building back up.

Mr. **Shuster**. Prior to Icahn?

Mr. **Souza**. Yes.

Mr. **Shuster**. Thank you.

Mr. **Oberstar**. When does TWA intend to deliver the certificates of merger to the Secretary of State of Delaware?

Mr. **Buckstein**. The current plan is late October. I believe we're contemplating a closing on October 24 or thereabouts. There are a number of additional conditions we have to satisfy before we can close.

Mr. **Oberstar**. And does that, then, trigger the distribution of cash or cash equivalents to Mr. Icahn and to other parties?

Mr. **Buckstein**. Yes, sir.

Mr. **Oberstar**. How much approximately?

Mr. **Buckstein**. The distributions will be $20 per share to Mr. Icahn and to the public stockholders of TWA. Aggregate number of shares outstanding is approximately $30 million. That will trigger, therefore, a distribution to Mr. Icahn and other stockholders of approximately $600 million.

We will also at the same time be satisfying certain outstanding indebtedness which is triggered by its terms on the occurrence of this event. I think that was somewhere in the vicinity of $150 to $200 million of indebtedness.

Mr. **Oberstar**. And that would mean roughly to Mr. Icahn about $540 million, if he's 90 percent——

Mr. **Buckstein**. I think the number's $469 million, Mr. Chairman.

Mr. **Oberstar**. 469?

Mr. **Buckstein**. Yes, sir. He owns approximately——

Mr. **Oberstar**. Now that's the $469 million we've encountered at other points in this hearing today?

Mr. **Buckstein**. Well, he owns approximately 23 million shares of TWA, and at $20 a share that would be approximately $469 million.

Mr. **Oberstar**. All right.

Mr. **Shuster**. Mr. Chairman, could I pursue that line of questioning for a moment?

Mr. **Oberstar**. I will gladly yield to the gentleman.

Mr. **Shuster**. Thank you.

What if Icahn decided to sell out, to do what he's been accused over the years of really intending to do? You say he's got 23,000 shares?

Mr. **Buckstein**. Yes.

Mr. **Shuster**. Has any analysis been made of what kind of profit he could make by selling out, by dumping his—"dumping" is not the right word—by selling his ownership?

Mr. **Buckstein**. Well, we really haven't done that sort of analysis because he hasn't been shopping the airline or intending to sell the airline. So it would be hard for me to imagine, but I guess if we wanted to figure out what his interest might be worth, we would look at what he would receive on the privatization of about $469 million or so, plus what the airline might be worth after the privatization.

As was suggested by some of the experts on this morning's panel, that's something that can't be discerned. There is a fair value there, but it's difficult. Appraisals that we have seen suggest that the value of his interest would be in excess of $300 million after the privatization. So if you were to add that to this $460 million, I could construct an argument that he could sell the airline or his interest in the airline for $750 to $800 million, but I don't know—but he has not attempted to sell the airline and hasn't attempted to negotiate a price, so I don't——

Mr. **Shuster**. Is not that at least a theoretically reasonable alternative for him to consider if he's thwarted in his efforts to make the management decisions that he wants to make—sell, get out, make a profit?

Mr. **Buckstein**. Do you mean if for some reason he was not able to take the company private?

Mr. **Shuster**. That or, if he felt that he wasn't able to do what he thinks is best for the company and for himself, another option is to simply get out.

Mr. **Buckstein**. I suppose it is, but I don't know that that's something he—I do know that that is not something he has explored. So while——

Mr. **Shuster**. Is it not, at least theoretically, a logical alternative if he feels that he's thwarted in what he's attempting to do?

Mr. **Buckstein**. It's certainly an alternative if he feels that he can't do with TWA what he would like to do, if he can't grow it the way he thinks he'd like to grow it, if he can't realize returns on investments the way he'd like to——

Mr. **Shuster**. One final question.

Mr. **Buckstein**. Yes.

Mr. **Shuster**. Should that not, then, set off, trigger a whole series of new concerns among the various parties, the people who hold the debt, the employees, the stockholders, everybody that has an interest in TWA, the Department of Transportation, the Congress, the competitiveness of the airline industry?

Mr. **Buckstein**. Certainly. You'd certainly want to know to whom he was selling the airline, what that person was, whether that person was going to be someone fit to own TWA, and a myriad of other issues. You'd want to know from that person all of the questions you asked Mr. Icahn in 1985 and I think all of the questions you've asked of me today. The answers obviously would be different; I can't tell by how much.

Mr. **Shuster**. So the options here are not simply Icahn doing what he wants to do with privatization versus the status quo. They are privatization, the status quo, and a third alternative—and maybe there's a fourth and fifth, too—but at least the possibility of Icahn saying, "I can't do what I want to do, so I no longer want to be involved."

Mr. **Buckstein**. Well, I suppose there's also the fourth alternative and that is liquidation.

Mr. SHUSTER. Yes.

Mr. BUCKSTEIN. I mean, I suppose if he was thwarted at every turn and unable to run the airline as he and the board thought appropriate, I don't know what other alternatives might be explored, but liquidation might be one of them.

Mr. SHUSTER. Thank you.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you. I appreciate your raising those points. Let me ask, is TWA willing, is Mr. Icahn willing, to accept a condition perhaps that DOT might impose on this certificate, to make a binding commitment or some enforceable commitment not to sell or dispose of that billion dollars in cash or marketable securities for other than airline operations?

Mr. BUCKSTEIN. I'm not sure I understand the condition you're suggesting might attach. Do you mean a limitation on what could be done with that billion dollars and how it could be deployed? Is that what you're referring to?

Mr. OBERSTAR. Yes.

Mr. BUCKSTEIN. I think as a member of the board of TWA, I would encourage him not to and I would vote against supporting any sort of condition like that because, frankly, I don't know today what the most effective way to deploy that billion dollars might be.

For example, there are affiliated and related companies that have been formed over the last several years. There are others that require capital. As I mentioned before, there is the money starting up the travel channel. We think that's an interesting opportunity for TWA. It's something we want to explore. We expect to continue to fund it. So I certainly would want to be able to not limit my opportunities to fund an operation like the travel channel.

We might also find, for example——

Mr. OBERSTAR. That would be an airline-related activity.

Mr. BUCKSTEIN. I don't believe that it's airline related at all, sir. No, I think it's a travel channel which deals not just with airlines, but we might decide, for example, to buy some ships that we might decide to use in our Getaway Program. Would that be airline related? Maybe, maybe not, but that's the problem with that kind of a limitation. There are just too many possibilities I can think of that would suggest a limitation is inappropriate.

For example, is it appropriate or inappropriate for TWA to have invested in USX or Texaco? We believe it's perfectly appropriate and consistent with the desire to expand and grow TWA, make a profit for its shareholders, make it more economically viable for its employees and the traveling public.

So that if there were ways in addition to growing the airline that we might use that billion dollars, I'd be loathe to commit to inhibit us from getting into those areas.

Mr. OBERSTAR. Well, I can appreciate your desire to have maximum financial flexibility, for business purposes. It strikes me that the billion dollars in cash and marketable securities has been cited as evidence of availability and capability of the newly configured airline to meet its obligations, to stay a competitive airline, to acquire the aircraft needed, and to maintain operations.

Mr. **Buckstein**. Mr. Chairman, you refer to a newly configured airline. We don't think there's anything new about TWA. We think——

Mr. **Oberstar**. It's not a publicly-held corporation. It's now——

Mr. **Buckstein**. We don't think that's——

Mr. **Oberstar**. That's the new condition.

Mr. **Buckstein**. Well, we don't think that's material, Mr. Chairman. We don't think that's meaningful.

Mr. **Oberstar**. But it is new. Don't contest me that it's not new because it is new.

Mr. **Buckstein**. You mean the fact that we are a privately-owned company?

Mr. **Oberstar**. Yes.

Mr. **Buckstein**. And if the company goes public again a year from now, what would you say at that point?

Mr. **Oberstar**. That's a new condition for that airline.

Mr. **Buckstein**. Well, I can only say that there is absolutely to indicate in Mr. Icahn's history with TWA——

Mr. **Oberstar**. Well, don't dispute my characterization; just dispute the substance or explain the substance of the question.

Mr. **Buckstein**. I don't mean to be argumentative.

Mr. **Oberstar**. The reason I raise the question is that you've cited that billion dollars.

Mr. **Buckstein**. Yes, I have because there have been suggestions that TWA will not have enough money to operate effectively.

Mr. **Oberstar**. And you're now saying that you don't want to encumber it in any way because you may want to use that for some other purpose?

Mr. **Buckstein**. But, more importantly, what I'm saying initially is that there is $1 billion there. There were $60 million there in January of 1986 when we were facing a six-month period involving a strike and terrorism where, but for borrowings, we wouldn't be here talking about this issue today, Mr. Chairman.

Mr. **Oberstar**. And you have more depth than you had then, too.

Mr. **Buckstein**. But the board—I think you need to accept that the board has a greater sense of responsibility than merely let's spend the billion dollars and not worry about TWA's well being. The board has responsibilities, as does senior management. Our responsibilities are not just to Mr. Icahn. We have responsibilities to the traveling public, to our employees, to the communities in which we operate, and we don't take those responsibilities lightly.

So to suggest that we need restrictions on what we would do with our available capital suggests that we need to be told this is the way you will operate because if we're not told that, we won't operate in the best interests of all those who have an interest in us. I don't accept that premise.

Mr. **Oberstar**. Are you suggesting that flexibility is needed for the company, for Icahn to invest that billion dollars in such a way that he can make more money on it and thereby strengthen TWA by having more money available?

Mr. **Buckstein**. I'm saying that the billion dollars should be deployed by TWA and its board in ways most suitable to improve TWA. TWA is an airline. That is what we do first and that is what we believe we do best.

However, that is not to suggest that there aren't other things that TWA might not be able to do effectively. In fact, the last three years have suggested there are some things that TWA can do extremely effectively. I'd hate to be inhibited from opportunities and investment possibilities as they arose.

I would suggest to you, Mr. Chairman, that directors of a company like TWA have responsibilities to a myriad of people. Hopefully, we have discharged those responsibilities during the past 3 years in a responsible way and hopefully we will continue to. I don't think we need to have handcuffs put on us, and I don't think we need to be told these are the proper ways to invest your money and deploy your capital. I think we've shown enough over the past 3 years to indicate that we would do these things in the best interest of TWA and its employees.

Mr. OBERSTAR. I'm not suggesting that it should be. I'm just speculating and seeing how far you're willing to go to stay in the airline business.

Mr. SHUSTER. Mr. Chairman?

Mr. OBERSTAR. Yes?

Mr. SHUSTER. May I cut in here?

Mr. OBERSTAR. I yield to the gentleman.

Mr. SHUSTER. Thank you, Mr. Chairman.

With regard to these responsibilities that you refer to, after the privatization, if it takes place, after it occurs, the employees will still own 10 percent of the company?

Mr. BUCKSTEIN. Yes, sir.

Mr. SHUSTER. So they will have the position of a minority stockholder?

Mr. BUCKSTEIN. Yes, they will, and we will have a fiduciary duty to them.

Mr. SHUSTER. That's what I'm getting at. That being the case, it's been my experience that minority stockholders have very substantial legal rights. If a minority stockholder feels that you as directors of the company are not fulfilling their fiduciary responsibility and are spending some of that billion dollars unwisely, they have very, very strong legal recourse. Is that a fair statement?

Mr. BUCKSTEIN. That is a very fair statement.

Mr. SHUSTER. Thank you.

Mr. OBERSTAR. My impression is that minority Members of the Congress have infinitely greater ability to direct the flow of events than do minority shareholders in a corporation. [Laughter.]

Mr. BUCKSTEIN. Based upon the number of lawsuits that I have seen in my practice by minority shareholders, I can tell you that there are some very effective tools that minority shareholders have at their disposal.

Mr. OBERSTAR. Ultimately, the majority in that organization is going to get its way.

One last question, and I want you to put yourself in Mr. Icahn's position, you know him so well. You've been associated with him for 20 years. You're a financial wizard. You're a legal expert. You are an astute observer of the airline scene. You understand your business exceedingly well. You represent him gracefully and enthusiastically and effectively.

What is there in this transaction to keep Mr. Icahn in the airline business? Why with this vast financial empire would he want to now configure it in the way that it has been laid out? Why would he want to stay? What is there to keep him in the airline business?

Mr. **BUCKSTEIN**. To respond to that—and thank you for the flattery; I do not feel half of those things that you suggest I do, but notwithstanding that, in trying to evaluate what it is that would keep Mr. Icahn in the airline and interested in its well-being, I look at my 20 years with Mr. Icahn and his investment experience. Mr. Icahn is someone who has demonstrated a unique ability to generate returns on capital in a number of environments, in environments involving pure investment and speculation, and in environments involving the conduct of going businesses and increasing and expanding those businesses.

I have never seen Mr. Icahn in a major investment that did not ultimately generate a meaningful return for him. After this privatization transaction is completed, he has not generated any return for him. His return is in the airline. His return is in what investment bankers are appraising and estimating is his value of in excess of $300 million worth of TWA.

If for no other reason, forget for the moment whether he loves the airline business and is committed to it with his dying breath, I can tell you that his investment in TWA is not something he would allow to go away without fighting to make it valuable and viable.

He also would not run the risk of losing an investment like that because that would make it virtually impossible for him to go back to the capital markets in the future and say, "Mr. and Mrs. Public, invest in this venture. Look at my track record." That's something he can do now; I suspect he wants to continue to do that.

Mr. **OBERSTAR**. Do you think he's in this for the 5-year game plan that we talked about earlier?

Mr. **BUCKSTEIN**. I think he's in here for a lot longer than that.

Mr. **OBERSTAR**. We'll take you at your word and we'll be here to take a look at it 5 years from now.

Thank you very much.

Mr. **BUCKSTEIN**. Thank you, Mr Chairman.

Mr. **OBERSTAR**. Any other questions?

[No response.]

Thank you very much.

Mr. **OBERSTAR**. Thank you.

Mr. **BUCKSTEIN**. Thank you, Mr. Chairman.

[Mr. Buckstein's prepared statement follows:]

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT

U.S. HOUSE OF REPRESENTATIVES

HEARING

THURSDAY, SEPTEMBER 29, 1988

STATEMENT OF
MARK BUCKSTEIN, ESQ.
SENIOR VICE PRESIDENT EXTERNAL AFFAIRS
AND MEMBER OF THE BOARD OF DIRECTORS
TRANS WORLD AIRLINES, INC.
605 THIRD AVENUE
NEW YORK, NY 10158

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

GOOD MORNING.

MY NAME IS MARK BUCKSTEIN. I AM SENIOR VICE PRESIDENT AND GENERAL COUNSEL OF TWA AND A MEMBER OF TWA'S BOARD OF DIRECTORS. WITH ME TODAY IS STEVEN SOUZA, VICE PRESIDENT AND ASSISTANT TREASURER OF TWA.

PRIOR TO JOINING TWA IN EARLY 1986, I WAS ENGAGED IN THE PRIVATE PRACTICE OF LAW IN NEW YORK FOR MORE THAN TWENTY YEARS, SPECIALIZING IN THE SECURITIES, COMMODITIES AND INVESTMENT BANKING INDUSTRIES. ONE OF MY CLIENTS SINCE THE LATE 1960s WAS CARL ICAHN.

I WELCOME THE OPPORTUNITY TO TESTIFY BEFORE YOUR COMMITTEE THIS MORNING ON THE SUBJECT OF TWA's PENDING PRIVATIZATION. THIS IS NOT THE FIRST GOING PRIVATE TRANSACTION INVOLVING CARL ICAHN IN WHICH I HAVE BEEN INVOLVED. THE FIRST SUCH TRANSACTION RELATED TO A REAL ESTATE COMPANY NAMED BAYSWATER REALTY AND CAPITAL CORPORATION.

MR. ICAHN ACQUIRED CONTROL OF BAYSWATER IN 1979 THROUGH A PROXY CONTEST. AT THAT TIME BAYSWATER HAD LESS THAN TEN EMPLOYEES AND WAS ENGAGED IN THE PASSIVE BUSINESS OF REAL ESTATE

INVESTING AND MORTGAGE LENDING. SOME WHO OBSERVED MR. ICAHN's ACQUISITION OF CONTROL OF BAYSWATER SPECULATED THAT HE WOULD SELL OFF ALL OF THE REAL ESTATE ASSETS OF THE COMPANY, LIQUIDATE AND DISSOLVE THE CORPORATION AND DISTRIBUTE ITS ASSETS TO ITS SHAREHOLDERS INCLUDING HIMSELF. AS YOU KNOW, SIMILAR SPECULATION HAS EXISTED ABOUT MR. ICAHN AND TWA.

IN FACT, MR. ICAHN EXPANDED THE OPERATIONS OF BAYSWATER, ULTIMATELY TOOK BAYSWATER PRIVATE AND GENERATED A RETURN FOR STOCKHOLDERS OF GREATER THAN 400%. MOREOVER, MR. ICAHN EXPANDED THE NATURE OF BAYSWATER's BUSINESS IN SUCH A WAY THAT TODAY IT IS ACTIVELY ENGAGED IN THE RESIDENTIAL AND COMMERCIAL REAL ESTATE CONSTRUCTION AND BROKERAGE BUSINESS. IT NOW EMPLOYS MANY PEOPLE IN THE STATE OF NEW YORK.

THE NEXT ACQUISITION OF CONTROL BY CARL ICAHN OCCURRED IN 1983 AND INVOLVED ACF INDUSTRIES, A COMPANY ENGAGED IN THE MANUFACTURE, SALE AND LEASING OF RAILROAD CARS. MR. ICAHN FOLLOWED HIS PATTERN ESTABLISHED IN BAYSWATER BY REHABILITATING ACF, INSTITUTING MEANINGFUL COST CONTROLS AND TAKING THE COMPANY PRIVATE, WHILE GENERATING SUBSTANTIAL PROFIT FOR SHAREHOLDERS. TODAY, ACF's RAILCAR BUSINESS IS THRIVING, PROSPEROUS, AND EMPLOYS 25% MORE EMPLOYEES THAN IN 1983. IT WAS NOT LIQUIDATED, DISSOLVED, DISMEMBERED OR OTHERWISE DESTROYED.

MOREOVER, ACF OPENED A THRIVING NEW PLANT IN EARTH CITY, MISSOURI. IT SHOULD BE NOTED THAT INTIALLY ACF CONTEMPLATED CLOSING UNION PLANTS IN PENNSYLVANIA AND WEST VIRGINIA AND ESTABLISHING A NON-UNION FACILITY IN TEXAS. HOWEVER, MR. ICAHN OPTED FOR NEW LABOR AGREEMENTS WITH THOSE UNIONS AND THE CONTINUATION OF THE EXISTING PLANTS.

IN 1985, WHEN MR. ICAHN BEGAN TO ACQUIRE HIS CONTROLLING INTEREST IN TWA, HE BELIEVED IT WAS NECESSARY TO NEGOTIATE AGREEMENTS WITH THE UNIONS IN ORDER TO HELP ENSURE THE VIABILITY OF TWA. AT THAT TIME, HE MADE NO PRETENTIONS ABOUT HIS GOALS. HE CLEARLY EXPRESSED TO THE UNIONS HIS DESIRE TO ASSUME CONTROL OF TWA, REHABILITATE THE COMPANY AND ULTIMATELY TAKE THE COMPANY PRIVATE, AS HE HAD SUCCESSFULLY DONE AT BAYSWATER AND ACF. IN FACT, HAD FORMER MANAGEMENT's PROJECTIONS FOR 1985 BEEN ACCURATE, THE GOING PRIVATE TRANSACTION MIGHT HAVE OCCURRED IN 1986 - A RESULT WHICH WAS THOROUGHLY ANTICIPATED AND EXPECTED BY THE UNIONS. THE 1985 AGREEMENTS WITH THE UNIONS CLEARLY SHOW AND ACKNOWLEDGE THE "GOING PRIVATE" CONCEPT.

HOWEVER, AS A RESULT OF TWA's DECLINING FORTUNES, NOT ONLY WAS THE GOING PRIVATE TRANSACTION DEFERRED, BUT MR. ICAHN FOUND HIMSELF IN A POSITION IN EARLY 1986 OF CONTROLLING A COMPANY ON THE VERGE OF BANKRUPTCY. SYMPTOMATIC OF TWA's PROBLEMS WERE THE FOLLOWING:

FIRST: ACTS OF TERRORISM IN THE MEDITERRANEAN REGION WERE STRIKING AT THE VERY CORE OF TWA's INTERNATIONAL BUSINESS.

SECOND: THE FLIGHT ATTENDANTS' STRIKE IN MARCH 1986 CRIPPLED TWA's OPERATIONS FOR THE SEVERAL MONTHS THAT IT TOOK TO RE-ESTABLISH A REPLACEMENT WORK FORCE AND TO REINSTITUTE A FULL SCHEDULE OF FLYING.

THIRD: WHILE ALL OTHER MAJOR CARRIERS HAD BEEN BUILDING HUBS AT MAJOR METROPOLITAN AREAS THROUGHOUT THE COUNTRY, THE BEST TWA COULD MUSTER WAS A SHARED HUB AT ST. LOUIS.

FOURTH: TWA's COMPUTER RESERVATION SYSTEM, KNOWN AS PARS, WAS BECOMING ARCHAIC AND OUTDATED, AS A RESULT OF TWA's INABILITY AND UNWILLINGNESS TO INVEST IN PARS THE SUMS NECESSARY TO EFFECTIVELY COMPETE WITH COMPUTER RESERVATION SYSTEMS OF THE OTHER MAJOR CARRIERS.

FIFTH: TWA's LACK OF CAPITAL RAISED THE DISTINCT POSSIBILITY THAT ABSENT MEANINGFUL CAPITAL INFUSION, TWA WOULD NOT BE ABLE TO SURVIVE THE FIRST HALF OF 1986.

CONFRONTED WITH ALL OF THOSE PROBLEMS, CARL ICAHN DID THE ONLY THING HE KNOWS HOW TO DO, HE BEGAN AN AGGRESSIVE PROGRAM OF RESOLVING EACH AND EVERY ONE OF TWA's PROBLEMS WITHOUT FEAR FOR

THE CAPITAL THAT HE HAD INVESTED OR THE RISKS ATTENDANT TO HIS BOLD REHABILITATION PROGRAM. IN THE FIRST HALF OF 1986 MR. ICAHN, TOGETHER WITH THE NEW MANAGEMENT TEAM THAT HE ASSEMBLED, TOOK THE FOLLOWING STEPS:

(1) HE NEGOTIATED THE ACQUISITION OF OZARK AIRLINES TO CONSOLIDATE TWA's HUB OPERATION IN ST. LOUIS. I NOTE HERE THAT PRIOR TWA MANAGEMENT HAD UNSUCCESSFULLY ATTEMPTED TO ACCOMPLISH THAT ACQUISITION FOR A NUMBER OF YEARS.

(2) HE NEGOTIATED THE PARS JOINT VENTURE WITH NORTHWEST AIRLINES, A STRONG INDUSTRY PARTNER FOR TWA. BY CREATING THAT JOINT VENTURE, TWA WAS ABLE TO SPREAD THE COST OF MAKING PARS COMPETITIVE WITH OTHER RESERVATION SYSTEMS, WHILE GENERATING CASH FOR TWA.

(3) HE SUCCESSFULLY DEALT WITH THE FLIGHT ATTENDANTS' STRIKE SO THAT TWA WAS ABLE TO CONTINUE TO CONDUCT ITS OPERATIONS IN THE FACE OF A JOB ACTION BY A PORTION OF THE WORK FORCE THAT WAS INTENT ON DESTROYING THE AIRLINE.

(4) HE ARRANGED TO BORROW IN EXCESS OF $600,000,000 TO FUND THE OPERATIONS OF TWA DURING THE FIRST HALF OF 1986, A PERIOD WHEN TWA WAS LOSING MORE THAN $250,000,000.

(5) HE ARRANGED FOR JOINT MARKETING AGREEMENTS WITH PIEDMONT AIRLINES AND OTHER SMALLER CARRIERS DESIGNED TO GENERATE MORE FEEDER TRAFFIC FOR TWA.

(6) HE ARRANGED FOR THE EXPANSION OF TWA AFFILIATIONS WITH VARIOUS COMMUTER AIRLINES, KNOWN AS TRANS WORLD EXPRESS, DESIGNED TO BETTER FEED TWA's HUBS IN ST. LOUIS AND NEW YORK.

(7) HE RESTRUCTURED TWA ROUTES SO THAT TWA BECAME LESS DEPENDENT ON MEDITERRANEAN TRAFFIC AND LESS DEPENDENT ON ITS SEASONAL BUSINESS. TWA HAS ADDED A NUMBER OF NEW INTERNATIONAL DESTINATIONS, INCLUDING POINTS IN SCANDINAVIA AND THE FIRST NEW U.S. FLAG SERVICE IN BERLIN SINCE THE END OF WORLD WAR II. AS A RESULT, TWA HAS A MORE BALANCED YEAR-ROUND SCHEDULE, INCLUDING EXTENSIVE NORTH-SOUTH TRAFFIC WHICH HELPS IMMENSELY TO OFFSET TWA's HISTORICALLY SLOW WINTER SEASON. IN FACT, TWA HAS BECOME ONE OF THE STRONGEST COMPETITORS IN THE FLORIDA MARKET.

(8) HE BEGAN TO ORGANIZE A NUMBER OF SUBSIDIARIES AT TWA TO BECOME INVOLVED IN NEW ACTIVITIES SUCH AS A CABLE TELEVISION COMPANY, KNOWN AS THE TRAVEL CHANNEL, AND VARIOUS MARKETING SUBSIDIARIES.

THROUGH 1986, AS ALL OF THESE PROGRAMS WERE FASHIONED AND IMPLEMENTED, CARL ICAHN CONTINUED TO RISK ALMOST $500,000,000 OF HIS OWN FUNDS, WITHOUT ANY ASSURANCE THAT THE REHABILITATION EFFORTS WOULD PROVE SUCCESSFUL. WHEN, IN 1987, TWA SEEMED TO HAVE SUFFICIENTLY TURNED AROUND, MR. ICAHN INITIATED THE GOING PRIVATE TRANSACTION THAT HE COMMITTED TO ACCOMPLISH WHEN HE TOOK OVER THE COMPANY IN 1985. HE VIEWED THIS AS A MEANS OF RECOVERING HIS INVESTMENT CAPITAL AND ALSO AS THE SATISFACTION OF HIS COMMITMENT AND OBLIGATION TO TWA STOCKHOLDERS TO GENERATE FOR THEM A RETURN ON THEIR INVESTMENT AND AS THE DISCHARGE OF HIS FIDUCIARY RESPONSIBILITIES TO THIS FELLOW SHAREHOLDERS. HOWEVER, AS A RESULT OF THE STOCK MARKET CRASH OF OCTOBER, 1987, THE PRIVATIZATION OF TWA WAS AGAIN DEFERRED.

IN 1988 A NEW PRIVATIZATION PROPOSAL WAS MADE TO TWA BY MR. ICAHN. THAT PROPOSAL WAS APPROVED BY A COMMITTEE OF INDEPENDENT DIRECTORS, AN INDEPENDENT INVESTMENT BANKING FIRM AND BY 97% OF TWA's STOCKHOLDERS WHO ARE NOT AFFILIATED WITH CARL ICAHN. THIS TRANSACTION DOES NOT IN ANY WAY REDUCE CARL ICAHN's COMMITMENT, SINCE HE WILL STILL HAVE IN EXCESS OF $300,000,000 IN TWA.

THROUGHOUT THE EVOLUTION OF THIS TRANSACTION, MR. ICAHN HAS CONTINUED TO EXPLORE THE ACQUISITION OF NEW AIRPLANES, THE ADDITION OF ANOTHER DOMESTIC HUB, THE EXPANSION OF TWA's

FLIGHT SCHEDULE THROUGH A COMBINATION OF MARKET ARRANGEMENTS, EXPANSION OF TWA's COMMUTER SYSTEM AND THE ADDITION OF NEW DESTINATIONS AND ROUTES. CAPITAL SPENDING AT TWA CONTINUES AT LEVELS EXCEEDING THOSE PROMISED BY CARL ICAHN WHEN HE ASSUMED CONTROL OF TWA.

AS WITH MR. ICAHN's EARLIER PRIVATIZATION VENTURES, TWA VIEWS THIS AS BUT ONE STEP IN ITS EVOLUTION AS A MORE EFFECTIVE COMPETITIVE FORCE IN THE AIRLINE INDUSTRY. WE AT TWA BELIEVE THAT THE PROBLEMS OF 1985 AND 1986 ARE BEHIND US AND THAT THE PRIVATIZATION WILL NOT SLOW DOWN OUR CONTINUING GROWTH PATTERN.

WE WILL BE PLEASED TO ANSWER ANY QUESTIONS THAT THE COMMITTEE CONSIDERS APPROPRIATE.

Mr. **Oberstar**. We'll now call our final panel, Mr. Greg Dole, Assistant Secretary for Policy and International Affairs of the Department of Transportation; accompanied by John Coleman, Director of the Office of Aviation Analysis.

We appreciate your patience in remaining throughout this long day.

We also have Mr. Peter Rosenow, Director, Office of Special Programs; Ms. Patricia Szrom, Chief, Air Carrier Fitness Division; and Mr. Samuel Podberesky, Assistant General Counsel for Aviation Enforcement.

Is there anyone I have missed?

[No response.]

[Witnesses sworn.]

Mr. **Oberstar**. Thank you.

TESTIMONY OF GREGORY S. DOLE, ACTING ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY JOHN V. COLEMAN, DIRECTOR, OFFICE OF AVIATION ANALYSIS; PETER ROSENOW, DIRECTOR, OFFICE OF SPECIAL PROGRAMS; PATRICIA SZROM, CHIEF, AIR CARRIER FITNESS DIVISION; AND SAMUEL PODBERESKY, ASSISTANT GENERAL COUNSEL FOR AVIATION ENFORCEMENT

Mr. **Dole**. Thank you, Mr. Chairman.

It's a pleasure to be here this evening——

Mr. **Oberstar**. Yes, evening it is.

Mr. **Dole** [continuing]. For the hearing. As you noted, I have some members of my staff with me.

I'd also like to ask, if I may, for permission to file an additional written statement to supplement the one we have prepared for you. I wish we had had a little more time to prepare the statement. As a result, I'd like to have another day or so to submit supplemental testimony.

Mr. **Oberstar**. Without objection additional materials, information, explanatory and clarifying statements may be submitted on your behalf.

Mr. **Dole**. Thank you.

Mr. **Oberstar**. And, again, the Chair would like to make it clear for the record for all those present that the events that propelled this hearing called for a certain deadline by which time it made sense to have a hearing and after which it does not make much sense to have a hearing.

We greatly appreciate the Secretary's participation. I know that he has been burdened with many other responsibilities, having newly taken over in this capacity, and that this was an additional work load dumped on at very short notice. We have great faith in your capacity to handle the position.

Mr. **Dole**. Thank you, sir.

Again, it's a pleasure to be here. Mr. Coleman, to my left, will discuss our regulatory standards for determining the fitness of air carriers and the process we used in making those determinations. He will also provide a status report on the request of the Independent Federation of Flight Attendants [IFFA] to review the continuing fitness of TWA.

Let me begin by briefly reviewing the nature and purpose of our fitness program and recent developments in that important area.

The Department is charged under the Federal Aviation Act of 1958 with exercising its powers and duties so as to assign and maintain safety as the highest priority in air commerce. Those duties include administering the fitness requirements of the statute.

More specifically, under sections 401 and 419 of the act, anyone seeking authority to conduct operations as a certificated or commuter carrier must be found to be a U.S. citizen as well as "fit, willing, and able" to conduct the services proposed.

Carriers that have been found fit and have been awarded a certificate or commuter authority are also subject to the continuing fitness requirements set forth in section 401(r) of the act. That section empowers the Department to review the continuing fitness of any carrier at any time for any reason and to modify, suspend, or revoke the authority of a carrier if we determine that it has failed to maintain its fitness or support the information needed by the Department to determine that the carrier remains fit. We may take this action, however, only after providing affected carriers with notice and hearing.

The Department does not have emergency authority under section 401(r) to take action against a certificated carrier before according the carrier its right to be heard. However, should we have any reason to believe that the safety of operations or passengers is being threatened, we would, of course, work immediately with the FAA, which has the authority to order immediate corrective action or cessation of the operations on an emergency basis.

The Department has established a comprehensive program for making initial fitness determinations and for monitoring the fitness of air carriers thereafter. We have a close working relationship with the FAA, and we use the resources of that agency to supply us with and verify information concerning air carrier fitness.

We also use consumer and third party complaints, enforcement records, financial information filed with the Department, and reports from the public, State and Federal agencies as well as the press, to alert us to potential problems.

The Department has also adopted an active approach to the administration of its fitness-related responsibilities. We have continuously reviewed our fitness policies and procedures to insure that they remain responsive to the needs of the traveling and shipping public.

With these considerations in mind, the Department has made significant improvements in both the scope and quality of the fitness program inherited from the CAB. Many of these reforms were designed to increase the safety of our Nation's air transportation system.

In this regard, one of the issues we faced initially was the number of carriers that we had to monitor. Under prevailing rules inherited from the CAB, although a large number of these airlines had either ceased operating or had never operated, they could resume operations at any time without first demonstrating their fitness to do so.

The Department of Transportation responded quickly to this situation by taking action to eliminate the potential problems created by dormant airlines. This action included new rules providing for an automatic revocation of certificate or commuter authority when a carrier holding that authority was dormant for a 12-month period. These regulations also require carriers which have ceased operations for any reason to have their fitness redetermined by the Department before resuming service.

These new rules became effective on December 8, 1986, Mr. Chairman. Since then, 150 carriers have lost their authority pursuant to it.

We have strengthened our fitness program in other areas as well. My short list of these achievements includes first, a significant improvement in the coordination and exchange of safety fitness information with the FAA; second, the development and implementation of an effective fitness monitoring system. Through the conscious efforts of DOT staff we have expanded the resources of fitness-related information and have established criteria for analyzing that information. These efforts have greatly improved our ability to spot potential problems and respond to them.

Third, the development and implementation of procedures and standards for conducting fitness reviews. These improvements have provided us with a reliable and efficient means for insuring that air carriers are meeting the continuing fitness requirements of the Act.

Fourth, the modification of guidelines we use to review applications for authority to commence or resume air transportation. These changes have allowed us to increase scrutiny on nonoperating carriers and their ability to meet the fitness requirements of the act.

Fifth, we have increased the quality and scope of resources dedicated to fitness programs at the Department. Improvements in this area include assigning more personnel within the Office of the Secretary to work in this important area and employing computerized information sources to facilitate our work.

Mr. Chairman, I believe that these considerations demonstrate the Department's commitment to achieving and maintaining effective initial and continuing fitness programs. I also believe that our efforts in this regard have shown positive results.

This point is graphically illustrated by our current level of activity in the area of continuing fitness. Mr. Chairman, during the current calendar year the Department has conducted 86 continuing fitness reviews and completed 49 examinations to date.

After careful examination, we have found 22 carriers to be fit. Seventeen others had their authority revoked either for lack of continuing fitness or failure to supply sufficient information supporting their fitness.

Of the remainder, the authority of nine carriers was suspended due to cessation of operations, and one carrier's request for a continuing fitness review was dismissed for lack of prosecution.

Mr. Chairman, this concludes my testimony. I'd like to give Mr. Coleman a few minutes to deliver his statement, if I could.

Mr. Oberstar. Please do, and we appreciate your remarks and this complete review of the fitness program.

The Chair would just like to add to that statement an commendation for your predecessor, Mr. Scocozza, who initiated the fitness review. Mr. Scocozza, in consultation with this subcommittee and its members on a bipartisan basis, initiated a get tough program to clean out and weed out the landscape and pursued it effectively.

If I recall correctly, we had an extensive discussion just a day or two before he issued the order that swept the whole category of dormant certificates out the door.

Mr. Dole. Yes, sir.

Mr. Oberstar. It was a courageous and bold move and one that took his initiative and the support of the Secretary. For that, Mr. Burnley deserves credit as well. The Chair wants to make that clear for the record and I appreciate the opportunity to do that formally.

Mr. Dole. Thank you, sir.

Mr. Oberstar. Mr. Coleman.

Mr. Coleman. Mr. Chairman, members of the subcommittee, I will add a level of detail to Mr. Dole's testimony and discuss the petition of the Independent Federation of Flight Attendants.

In the area of initial fitness, the Department uses a three-part test to determine the fitness of a company. First, we examine the experience and competence of an applicant's key employees to determine whether they possess the business and technical knowledge to run an airline of the size and complexity proposed.

Second, we review a company's operating and financial plans to gauge the applicant's understanding of the costs associated with entry into the airline industry and evaluate whether the applicant will have the necessary funds to enable it to begin operating without posing an undue risk to consumers or their funds.

Third, we study the compliance record of an applicant and its key employees to insure that there is no history of violations that may lead the Department to doubt that the carrier would comply with State or Federal laws, rules, and directives.

In the area of continuing fitness, to determine the continuing fitness of an airline, we begin with the routine receipt and review of information from a variety of sources. The preliminary information we review is gathered both from Departmental sources and from external sources.

DOT sources include reports from the FAA concerning major enforcement actions or perceived financial or managerial problems at a carrier, reports from our Office of Consumer Affairs on denied boardings and consumer complaints for individual carriers, reports from our Research and Special Programs Administration on carriers that are delinquent in filing Form 41 data and other required reports, as well as the status of any related enforcement actions, and reports from other offices that deal with air carrier issues.

External sources, which are equally important, include press reports and interested persons, including employees, competitors, and creditors. Information that may have a bearing on a carrier's safety compliance disposition is of utmost importance to us and we rely to a great extent on the FAA for its views on such information.

We carefully study this information to establish whether a carrier requires a more in-depth fitness review. Where an analysis of the preliminary data shows that a carrier has undergone substantial changes that may affect its fitness or where actual fitness problems are perceived, we undertake a further fitness review. Such a review would include analyzing information already in the Department's possession relating to the carrier, such as Form 41 financial and traffic reports, and the FAA's Aviation Safety Analysis System, on the company's accidents, incidents, if any, and enforcement records.

Typically, we make a further check with FAA personnel who are directly familiar with the carrier's operations to determine whether our information is up to date and whether there are other factors bearing on the carrier's fitness.

Where appropriate, we seek information from other Government sources such as states' attorneys general, the Securities and Exchange Commission, and bankruptcy court officials.

Although this review may be sufficient to answer our concerns, in most cases we also send a certified letter to the carrier requesting additional specific information relevant to our concerns. A copy of the letter is sent to the FAA. Depending on the response of the carrier, we will then follow one of two paths of action.

First, if the carrier does not respond to our information request or if the response does not satisfy the concerns raised by our letter, we will conduct a further review. This could include requiring a carrier to file periodic financial reports or reports pertaining to the status of a bankruptcy case or enforcement proceeding.

In cases where we see sufficiently serious fitness issues, we may recommend that the Department issue an order establishing more formal procedures. Most frequently, the procedure chosen in that event is a show-cause proceeding in which DOT proposes to suspend or revoke or otherwise limit a carrier's certificate.

Another option, of course, is to institute a formal investigation which may even include an oral evidentiary hearing. This approach must be followed if there are important disputed issues of fact.

If, on the other hand, the carrier submits a thorough response to our information request, we may find, following our analysis of that response together with the data already compiled, that the carrier remains fit and no further procedures are necessary.

In such cases, we place a memorandum in our files summarizing the pertinent information reviewed and the basis upon which the decision to close the review was reached. We generally send a letter to the carrier and to the FAA indicating that the review has been completed and that no action is contemplated, but reminding the carrier that our continuing fitness powers and responsibilities remain in force.

While most of our continuing fitness reviews can be completed within three to six months, depending upon the complexity of the issues involved, a case that is set for oral evidentiary hearing can take several years to complete, as happened in the Galaxy Airlines case with which this subcommittee, of course, is familiar.

I will give you a few comments on the status of the TWA flight attendants' petition. As you know, on August 30th the Independent Federation of Flight Attendants [IFFA] filed a petition requesting that the Department, one, institute a public investigation into the continuing fitness of TWA; two, prevent the TWA stockholders from meeting and voting on whether to approve Carl Icahn's plan to take TWA private; three, require that all stock controlled by Mr. Icahn be placed in a voting trust until the conclusion of the fitness investigation; and, four, take enforcement action against the carrier for failing to comply with the information filing requirement of section 204.4 of our rules.

The stockholders' meeting took place on September 7th and an overwhelming majority of the shares were voted in favor of the Icahn proposal. Therefore, this portion of the petition is now moot.

On September 9th, TWA filed an answer to the petition and on September 20th replies were filed by the IFFA and by the Consumer Federation of America. On September 26 the Air Line Pilots Association filed a late response in support of the IFFA petition.

Because the IFFA petition is currently pending before the Department, I'm sure you appreciate that I cannot discuss with you the merits of the petition and the responses or any specific actions we may take in this case.

However, we are now reviewing the pleadings, which are voluminous, and the matters addressed, which are complex. After we have reviewed and analyzed the various filings, the Department will issue an order stating whether it finds grounds to further investigate TWA's continuing fitness and, if so, what procedures it would follow.

I assure you that we will address the petition as expeditiously as possible given the complexity of the filings and the far-reaching effects our decision may have.

That concludes my statement, Mr. Chairman. We'll all be happy to answer any questions the subcommittee may have now on the Department's fitness program.

Mr. **Oberstar**. Thank you very, very much for your presentation and for clarifying the fitness procedures of the Department. Certainly I understand the issue of the merits of the petition, and we made it clear in discussions with the Office of the Secretary that we would not enter into any questions on the substance of the filings. We understand that matter very clearly and will refrain from doing so.

I am very pleased, Mr. Coleman, to have so complete a statement on the fitness program. This is the first time such detailed presentation has been made to a House committee, certainly to this subcommittee, and I think it may represent substantial progress from a few years ago when there was a question whether there was any fitness program at the Department. There certainly is now and we're pleased to see it.

Mr. **Coleman**. Thank you, sir.

Mr. **Oberstar**. I think the responsiveness to the matter of compliance record of an applicant, as you cite on page 2, ". . . an applicant and its key employees to insure there's no history of violations . . ." As Patti Szrom will well appreciate from her previous position that emerged from Galaxy Airlines where in that gray era of transition from CAB to DOT somebody didn't pick up that track record of violations and of earlier problems, and crisscrossing investments and holdings that should have raised the red flags of caution about that operator and that carrier.

You have a system in place now and it is working, and we're very pleased to see it. The Department at the Secretarial level is doing what it ought to do in the public interest.

Now to get to the point of this hearing, the question is whether the Department will take up as a matter of fitness review a change in ownership of an airline when it goes from public to privately held status. This is the first in the case of a major. Certainly it is not likely to be the first probably in that category, but more certainly in the second level of carriers, the regionals and the commuters. There is even greater opportunity there for privatization. There may be many of those that are private; I don't know. We haven't looked at that yet, but we're certainly going to do that in this subcommittee.

Has that policy decision, Mr. Secretary, been made?

Mr. **Dole**. Mr. Chairman, we obviously have under section 401(r) the opportunity to review the continuing fitness of a carrier. We have done that on numerous occasions. In fact, this year we have looked at some 85 different carriers and have made some determinations. We found 17 were not fit, as I said in my testimony.

However, in terms of looking at this issue from the perspective of section 408, where there is a transfer of stock such as this where the company is privatized, goes private, from the current entity that it is—that is, TWA—to one where there is a holding company that in fact would hold the stock, we don't see that as triggering section 408. Section 408 is triggered when there are, in fact, two separate entities involved in air carrier operations.

Mr. **Oberstar**. Let me interrupt at that point just to make a clarification. In response to a question that I asked, Mr. Buckstein explained and stated clearly for the record that there will not be a holding company involved.

Mr. **Dole**. He indicated there would not be a holding company.

Mr. **Oberstar**. There will not be a holding company involved.

Mr. **Dole**. Well, 408 is triggered when——

Mr. **Oberstar**. I don't know whether that makes any difference in your calculation, but that emerged as an important and significant fact from the hearing today.

Mr. **Dole**. Where the entity that, in fact, will be in control of the shares after the transfer is not currently involved in air carrier operations, available section 408 would not be triggered. We still have available under section 401(r) however the opportunity to review the continuing fitness of a particular air carrier.

As Mr. Coleman said, it's a three-pronged approach. We look at the disposition of the carrier to comply with the FAA regulations, primarily the safety regulations, whether or not management is competent, and in fact if there are sufficient resources to insure that the operations of the carrier don't result in undue risk to the public.

So we still have that right and opportunity to review whatever entity ultimately owns and operates this TWA or any other carrier that's similarly situated. We still have that authority to review it.

Mr. **Oberstar**. Very good. I have a number of other questions. We have now the second call of a vote on the House floor. The subcommittee will stand in recess pending that vote.

[Recess.]

Mr. **Oberstar**. The subcommittee will resume its sitting.

Mr. **Dole**. Mr. Chairman——

Mr. **Oberstar**. Yes?

Mr. **Dole** [continuing]. Excuse me, sir. I'm reminded by staff that recently, as you know, Braniff Airlines changed management [and owership] and, as a result of that, the Department of Transportation commenced an informal investigation of that which is currently ongoing, and I think it is a further response to your original question: what happens if there is a change in management or if there is a change in ownership? In fact, we are dealing with something like that at the Department in the context of Braniff.

Mr. **Oberstar**. Are you saying, then, that there is an established policy of the Department to review change in ownership or a change in management?

Mr. **Dole**. That's a fair representation, yes, sir.

Mr. **Oberstar**. Is this an action that the Department will initiate on its own?

Mr. **Dole**. That's correct.

Mr. **Oberstar**. And have there been other cases where third parties have asked the Department to initiate such action?

Mr. **Dole**. Yes, sir. That happens regularly. We at the Department in Mr. Coleman's office and in Ms. Szrom's division typically receive information from third parties, employees, creditors, banks, people who are expressing concern about the financial fitness of a particular carrier. So we react and respond to those on a daily basis. Ms. Szrom is in constant contact with the FAA who are, in turn, in contact with people in the field. That happens on a regular basis, yes, sir. A third party typically comes in or will call us or we even read the trade press, the news, the daily news. If it looks like there is a change in ownership or if it appears that one of the carriers is having financial difficulty, then we will initiate, self-initiate, this informal investigation.

Mr. **Oberstar**. Well, that's very good to hear. I am pleased to hear that.

Mr. **Dole**. I'm reminded also that in the context of a change in management, the change must be "substantial" for us to go forward.

Mr. **Oberstar**. Not just a mid-level shuffle, but a——

Mr. **Dole**. That's correct.

Mr. **Oberstar**. Top management; is that what you're talking about?

Mr. **Dole**. That's correct; yes, sir.

Mr. **Oberstar**. I would like to say also at this point how appreciative I am and, the members of our subcommittee on both sides of the aisle, for the work that Patty Szrom did some years ago on Galaxy Airlines. Without her diligence and that of the General Counsel's Office, the Inspector General, and high-level interest on the part of the Assistant Secretary at the time, we would not have made as much progress as we have.

We found some people who are very responsive, who understood the dangers of this situation and responded. As a result of that action, I think we have a stronger oversight program on the part of the Department, a much stronger fitness program, and a better airline industry.

Mr. **Dole**. I would like to return the accolades to you, sir, for having conducted those hearings, because I think it really provided us an opportunity to focus on the fitness program.

Mr. **Oberstar**. Now when the Department looks at financial fitness do you look beyond profitability or current showing of profit? Whoever wishes to respond to this question please do so. Additionally, do you look at whether a carrier is becoming overloaded with debt, whether it will be able to meet its interest payments, its current account requirements, and have enough assets? Let me leave that aside. That's a different question I'll get into later.

Are profit, debt and meeting interest payments factors that go into the financial fitness consideration?

Mr. **Dole**. If I may respond, Mr. Chairman, and refer to our investigation of Eastern and Continental that was conducted recently. In the case of Continental, it had lost in 1987 about $258 million, but it was the feeling at the Department that, in fact, it had access to a lot of capital; it had access to other financial assistance; it was a going concern; it was part of a larger operation that, in fact, had access to financial assistance.

The bottom line really is, sir, whether or not that operation can conduct its business in a safe manner, so that the public safety is not adversely affected.

We look at all those factors, all those indicia, but really we have to decide on whether or not to lift a certificate of a carrier based on whether or not we believe, after reviewing all that information and data, that in fact it is not capable of providing service to the public in a safe manner.

Mr. **Oberstar**. In making that financial analysis, what expertise does the Department have in house? What expertise can it call upon in other Government agencies to make evaluations of the very complex financial arrangements that accompany these proposals, especially that which has been the subject of today's hearing.

If you saw the charts they were submitted with the separate filings of this intricate financial empire, I would think that one would have to carry that around to remember just where the company is at any given time of the day. It's a complex, interlocking financial empire that Mr. Icahn heads. Who do you have that untangles that sort of thing? What type of expertise do you draw upon?

Mr. **Dole**. Mr. Chairman, we again went through that very exercise and drill in the context of the Eastern-Continental preliminary investigation. Let me just say we also are in a position to draw upon outside resources, but in-house we have in the Policy Office of Economics some 30 economists. We have in Mr. Coleman's office a whole host of people who, in fact, do such analysis. We have an office in the Department called RSPA, the Research and Special Programs Administration, that collects what's called Form 41 data, all its financial data that we require to be filed monthly, the kind of data that you cited in your previous question.

We have a goodly number of people in the Department analyzing it. But in cases like Eastern-Continental or the TWA filing, we have the opportunity and the resources outside of the Department of Transportation. In that case we were able to utilize some 20 analysts from the Defense Contract Auditing Agency. We were able to draw upon the expertise of a number of economists in different agencies around town, at HUD, CEA, and the SEC as well.

For cases that are this complex, the SEC as well. We were able to bring in all this expertise in a very short order to analyze the Eastern-Continental issue.

I suspect if we went this far in the TWA case, we could muster those same resources. But on a day-to-day basis, we have sufficient numbers of people in the Department right now to review and analyze all this data that is provided to us.

Mr. OBERSTAR. I am very pleased to hear that and I compliment you on that expertise in-house as well as your willingness to call upon sister agencies.

Mr. DOLE. Mr. Chairman, I might add we've also doubled the size of Ms. Szrom's office in the last three years, since 1985.

Mr. OBERSTAR. Oh, that's good to hear.

Mr. DOLE. Yes, sir.

Mr. OBERSTAR. We're very pleased to hear that.

I think that justifies the confidence this committee had in the Department's ability to conduct that kind of oversight.

When you say doubling, what does that mean?

Mr. DOLE. Doubling, that means——

Mr. OBERSTAR. That doesn't mean two of Patti Szrom, does it? [Laughter.]

Mr. DOLE. No, that means eight Patti Szroms.

Mr. OBERSTAR. That is a formidable force, indeed, in itself. [Laughter.]

Mr. DOLE. And we expect to be going to a ninth Patti Szrom.

Mr. OBERSTAR. Now let's take a future event. Let's just speculate that the transaction envisioned and projected by Mr. Icahn were to take place. Let's say that there were a future sale of critical assets, of the international routes that were the subject of earlier discussion today or liquidation of certain securities drained off to some other purpose. I simply use that because that was the subject of earlier inquiry. Would that type of action trigger an inquiry by the Department? Is that something you would want to look at? Would you look at its significance in the overall scheme of things, of an airline as to the relationship of such an action to the fitness of that carrier to continue operations?

Mr. DOLE. I think it's fair to say that it would cause us to take a second look, again initiate one of these informal investigations that we do daily, again based on information that we read in the trade press.

If Mr. Icahn or someone in a similar situation were to transfer significant amounts of equipment and assets and routes, we would as a routine matter take a look at that just to see what the impact would be on the safety.

Mr. OBERSTAR. Thank you.

I have a few more questions and I'd like to conclude before the vote now in progress comes to its deadline.

In the 1985 hearing of the Aviation Subcommittee on Mr. Icahn's takeover of TWA, then-Assistant Secretary Scocozza testified that, short of preventing a person from purchasing or selling stock of a carrier, DOT could prevent a person from doing anything including dispersing assets in a fitness inquiry. Does that continue to be the Department's position?

Mr. DOLE. Yes, sir. Again, under 401(r), we can take action like that.

Let me also say that it's my understanding that in the 1985 401(r) case, the Department of Transportation said it didn't really want to look prospectively at what would happen if Mr. Icahn did assume control of TWA.

We did say, and if I may quote, while we have a legal authority to institute a case, "the Department does not intend through our authority under 401(r) to be drawn into takeover attempts or other management disputes as a matter of course unless there is a compelling prima facie case of a lack of fitness."

That's the position we took in 1985, sir.

Mr. OBERSTAR. I thank you for that.

Now under the Code of Federal Regulations, Title XIV, section 204.4, to be specific, certificated carriers are required to file data with DOT when they propose or intend to undertake a substantial change in operations. Is privatization of a carrier part of that; does it come under that rubric of a substantial change in operations? And keep in mind that Mr. Buckstein attempted to say that this was no change at all. I pulled him up short on that and said, "Don't contest that it is not a change. It is a change. It is a change in operations."

Mr. DOLE. Mr. Chairman, I'm going to, unfortunately, have to hide behind the fact that this is an ongoing petition before us right now, that it really goes to the heart of it, and I would prefer not to have to respond directly to that.

Mr. OBERSTAR. Is this a matter under consideration? Is this something that is yet to be determined?

Mr. DOLE. Yes, sir.

Mr. ROSENOW. It's been raised in the IFFA petition and TWA has responded to it.

Mr. OBERSTAR. That answer is sufficient for me. I said to the Secretary, if there are questions that are under consideration, your response that they are under consideration is sufficient, at least for the purposes of this inquiry.

We know that there is a policy matter yet to be decided.

Mr. DOLE. Yes, sir.

Mr. OBERSTAR. All right. That's fine.

Most fitness cases have involved relatively small or marginal carriers that are in bankruptcy or on the verge of bankruptcy, and where there is dormant authority, and so forth, hasn't been used in a period of time. In the cases of Eastern, Continental, People Express, Braniff and Frontier, in this deregulated environment, we've seen some volatility in the financial condition of airlines. We have also seen that even large carriers can be driven to financial extremes, even though their financial fitness may not show up in a dramatic way as Galaxy or Ryan or Lonestar. You touched on it just briefly, but in more detail, what are your procedures in the Department for analyzing these financial conditions to ensure that problems of major carriers are dealt with before they become calamities? You're looking over someone's shoulder and saying, "Stop, we see some big problems coming up here."

Mr. **Dole**. Yes, sir. We have the terms of being in a proactive mode as opposed to a reactive one—and I think that's the thrust of your question; is that correct?

Mr. **Oberstar** Yes, but it involves more than that. It involves really looking—yes, proactive, but with respect to the big players in this ball game.

Mr. **Dole**. Yes, sir. We have, as a matter of fact, recently set up a network between ourselves, Mr. Coleman, Ms. Szrom's offices, and a network with a whole host of organizations. The FAA headquarters, certainly we talk to them on a regular, daily basis in terms of what kind of enforcement actions are they considering out there, what they're finding in the way of inspections. Again, this happens on a daily basis.

We have also instituted what is called the OST-FAA fitness working group which is headed up by a Mr. John Kern from the FAA who testified here before you yesterday. Also, we have Mr. Jack Harmon from Mr. Coleman's office who represents the Office of the Secretary. They meet on a regular basis as well to try to anticipate potential problems with the small carriers as well as the large carriers.

But, again, this network is utilized on a regular basis, daily, in terms of dealing with the FAA, the field offices, the FSDOs. We also have developed—and I don't know if Mr. Scocozza mentioned it last time when he was here or not—this air carrier analysis support computer system which is a link between ourselves and the Department of Defense which receives a lot of information because, obviously, as you know, DOD charters a lot of flights from the large carriers. A computer-based analysis that's done. It ranks the different carriers in terms of service, in terms of reliability. I think it may even go to safety; I'm not sure. But it's a rather thorough analysis of the different carriers in terms of fitness.

We also receive, as I said before, this Form 41 data from one of our administrations. It's collected on a regular basis. We get regular reports from the Office of Economics within the Policy Office. We also get reports from the FAA on what certificates they have suspended.

Again, this communication happens daily, so that we are in a proactive mode as opposed to a reactive mode, which is something I know you, as chairman of this committee, would want us to be in.

Mr. **Oberstar**. Well, let me say that's a vast improvement on five years ago or four years ago when I became chairman of the subcommittee, and I am very pleased. I want to compliment the Department on expanding its operations, its oversight, and developing that array, that involvement, and also the DOD participation. As Patti well knows, that was another product of Galaxy. The Defense Department really established a very elaborate scheme.

There's one thing as we conclude this hearing. I encourage you and your 30 economists and analysts—and it's going to take all 30 of them to go through this network, this empire, as I've called it, of Mr. Icahn's—to look at that billion dollars. One group of financial analysts says it doesn't exist; it's a big debt. On the other hand, Mr. Buckstein found $200 million for us today that didn't exist yesterday, or that we didn't know about yesterday. Obviously, it existed; since he said it's there; it's there. It's $200 million in income, interest on investments that we didn't know about until today. You know how to make sure that it's really there.

I don't question of any veracity. There may be a different way of looking at this—that it's there in some tangible, real, practical sense; and that in fact the financial condition of this airline is a billion dollars to the good, as represented by Mr. Buckstein.

Also take into consideration his statement that Mr. Icahn is in this for the next five years, that he is not going to walk away from and abandon this airline. He is committed to 50 or 60 new aircraft, a $300 to $400 million a year investment.

Take a good, hard look at where that money is coming from to finance those purchases. You've got it all laid out now. I think we've done at least part of the economic inquiry that your staff must undertake.

I'm troubled by that billion dollars. It's here and then it isn't here. It's committed to the airlines, but it could be used for something else.

The reason we held this hearing is to be prospective. We have an opportunity to look at things before, in this context, something irreversible occurs. The Department is in that position now.

I only ask that you look at it carefully. You now have a structure. You now have the staffing. You now have the experience of other carriers. You know what the implications are for the traveling public.

It's important for the Department to undertake this activity because you may recall earlier in this Congress there was quite a contest over whether the Department of Transportation should continue to exercise this function or whether some other agency of Government, in whom I have less confidence, should exercise that function. It was our commitment, the commitment of the former chairman, our departed chairman, Mr. Howard, that this committee will exercise the oversight necessary and prevail upon the Department to exercise a vigorous, proactive oversight to assure that the public interest is sustained. You are now in that position, and I urge you to exercise that responsibility vigorously.

Mr. DOLE. Mr. Chairman, we will certainly continue to do so and look forward to working with you and your staff in the future on this issue.

Mr. OBERSTAR. Do you have any time frame in which this process may be concluded?

Mr. DOLE. According to Ms. Szrom, TWA is expected to be filing additional data and information today. As you know, the IFFA filing was some 4 inches thick, and now we'll be receiving additional information from TWA. We anticipate further replies from IFFA. So that it doesn't look like all the data is in at this point.

We will go through it as expeditiously as we can. It is complex, as you have indicated. There are a lot of SEC-related issues that we must examine. We must muster as many people in the Department as possible to look at this as quickly as we can, but, again, the data seems to be coming in constantly, so I can't really give you a deadline.

Mr. **Oberstar**. Please do stay in touch with us as you proceed with this heavy responsibility.

Mr. **Dole**. Yes, sir.

Mr. **Oberstar**. Thank you for the candor of your response and for the participation through this very long day, punctuated as it has been by repeated recorded votes on the House floor.

Mr. **Dole**. I applaud you for your stamina, Mr. Chairman.

[The supplemental statement of Mr. Dole and Mr. Coleman's prepared statement follows:]

SUPPLEMENTAL STATEMENT OF GREGORY S. DOLE
ACTING ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS
BEFORE THE
HOUSE SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
REGARDING AIR CARRIER FITNESS

Mr. Chairman, Members of the Subcommittee, this written statement is intended to supplement the oral testimony given by myself and Mr. John V. Coleman of my staff before you on September 29, 1988. This statement contains a discussion of the Department's initial and continuing fitness program as it is currently administered. While some of this discussion repeats the information provided in the oral testimony, it is intended to be a single comprehensive document explaining our overall fitness program. I have also provided a discussion of the improvements we have made to the fitness program since the Department inherited it from the Civil Aeronautics Board in January 1985 when the Board was sunset.

INITIAL FITNESS

Under the Federal Aviation Act, anyone proposing to conduct air transportation operations as a certificated or commuter air carrier must be a citizen of the United States and must be found "fit, willing and able" to conduct the services proposed.

The Department uses a three-part test to determine the fitness of a company. First, we examine the managerial competence of the carrier's key personnel to see whether they have sufficient business and aviation experience to operate an airline. We also look to see that the management team, as a whole, possesses the background and experience necessary for the kind of operations being undertaken.

Second, we review an applicant's operating and financial plans to see whether the carrier has a reasonable understanding of the costs of starting its operations and has a plausible plan for raising the necessary capital. The applicant's operating plan consists of a list of markets to be served, aircraft types to be used, number of passengers anticipated, etc. Its financial plan includes pro forma financial statements for the first year of operations and a breakdown of its estimated pre-operating/start-up expenses. A new entrant must demonstrate that it has access to sufficient funds to cover, at a minimum, a reasonable estimate of all of its pre-operating/start-up expenses and its operating expenses through the first three months of its operations. While approved loans or lines-of-credit can be included in determining the amount of available funds, forecast revenues cannot. The applicant also must submit verification of the proposed funding. This could include a statement from a financial institution of actual funds on deposit or a loan or line-of-credit, verification from a brokerage firm of an actual or proposed public stock offering, or evidence of the financial backing of its owner.

Third, we look at the compliance record of an applicant to see whether it and its key personnel have a history of safety violations or consumer fraud activities that would pose a risk to the traveling public or otherwise have a history that would lead us to believe that the carrier is unlikely to comply with government laws, rules and directives.

Also, we check with the Federal Aviation Administration (FAA) and the National Transportation Safety Board (NTSB) to verify any information the applicant has given us on its past safety record. In conjunction with this review, we access the FAA's Aviation Safety Analysis System (ASAS) data bank to see whether the applicant has been cited for any violations of the Federal Aviation Regulations and to determine its accident/incident record. Further, we request an FAA analysis of the significance of the carrier's overall safety record, including whether any open violations or accidents/incidents could result in certificate actions against the carrier. We also ask the FAA whether the applicant holds or has applied for the necessary safety certificate, the status of any such application, and whether the FAA, based on its review of the applicant, knows of any reason why we should not find it fit. Our Investigation Division also checks with the Securities and Exchange Commission and reviews our consumer and enforcement files for any violations involving the applicant or its key personnel.

Each application is reviewed to ensure that all information is accurate and complete. This includes examining whether the carrier's historical data, employment history of key personnel, financial projections, and safety history are current. If an application is incomplete, we request that the applicant provide additional information in order for us to complete our review of the application.

Once we determine that an application is complete and the applicant appears to be fit, we issue an order in which we tentatively find the applicant fit, but invite interested persons to "show cause" why we should not issue a final determination to that effect. If no answers are received, we issue a final order finding the applicant fit and awarding it the requested authority. If there are objections, we review the information submitted before making our final decision.

If the applicant has not already received the required operating certificate from the FAA, we impose a condition that states that the authority will not become effective until after we have received from the FAA a copy of the applicant's air carrier operating certificate. In many instances, we also impose a condition that the company provide, along with the FAA documentation, updated financial statements and verification that required funds have, in fact, been received, as well as a statement of any changes that have occurred in the company's key personnel, compliance history, operating proposal, or financial picture since its application was reviewed by the Department.

In cases where there are substantial questions about a carrier's fitness to operate, we can issue an order to dismiss or deny the application. We also can set a case for hearing before an administrative law judge. The Department, however, sets for hearing only those cases where substantial or controversial questions of material fact are raised that can best be resolved in an oral evidentiary proceeding. Costs to an applicant to participate in a hearing could be considerable and the delay in initiating operations could be substantial. If a hearing is held, witnesses are presented and cross-examined, briefs are filed, and the Judge issues a recommended decision. The Department then reviews the Judge's recommendation and issues a final decision on the application, finding the applicant either fit or unfit.

CONTINUING FITNESS

Once a carrier is found fit by the Department, it is subject to the continuing fitness requirements of section 401(r) of the Act. Thus, after a carrier has been found fit initially, it must remain so to continue to hold authority to provide the service for which it was found fit. Section 401(r) requires the Department to modify, suspend, or revoke authority of such carriers that we find have failed to comply with the continuing fitness requirements or failed to supply such reports as we deem necessary to determine the carrier's fitness.

The Department has developed and continues to further develop an extensive information system for monitoring the continuing fitness of certificated carriers and commuters. This system involves the receipt and analysis of a variety of information which serves to alert us to potential problems with a carrier. It includes periodic reports from other offices within DOT on such issues as the carrier's reporting compliance, consumer complaints and enforcement problems, observed financial or operational problems, and major FAA civil penalty or certificate actions against the carrier. In addition, we regularly review information contained in FAA's Aviation Safety Analysis System (ASAS) data bank and DOD's Air Carrier Analysis Support (ACAS) system data bank for safety, enforcement, operational or financial problems with specific carriers. Also, we regularly review media and trade publications for articles pertaining to air carrier operations, changes in ownership or management, financial condition, etc., and follow up on information from a carrier's employees, competitors, or creditors on such matters.

Informal continuing fitness reviews are instituted by DOT staff when the information obtained through our monitoring system indicates that a carrier has declared bankruptcy or is experiencing serious financial problems; has undergone substantial management or ownership changes (except when the new owners are known to be qualified and no major management changes are to be made); or is experiencing severe or repeated compliance or enforcement problems.

When we institute a continuing fitness review, we notify the carrier in writing (by certified letter) of our concerns and seek specific information from the carrier. A copy of our request is sent to FAA headquarters and regional staff. Depending on the reasons for instituting the review, e.g., the carrier is experiencing serious financial or compliance problems, we may also request the FAA to increase its surveillance activities and be alert for signs of decreasing levels of safety. We give the carrier a specified amount of time to respond to our information request, usually ranging between 15 and 30 days depending on the information requested and the urgency of the problem. If a reply is received, the information is reviewed for completeness and responsiveness to the concerns or questions raised. If additional material is necessary, another letter requesting such material is sent, again with a specified time period for response. Once all of the requested information is received, if the response indicates that the carrier remains fit and no further procedures appear warranted, we prepare an internal memo summarizing the information submitted and explaining the bases for the findings on the carrier's fitness. In addition, a letter is then sent to the carrier stating that the review has been completed and that no further action is contemplated at this time. A copy of this letter is also sent to the FAA.

If, however, a response to the letter is not received, or if the response does not satisfy our concerns over the carrier's fitness, we may direct the carrier to provide us with periodic reports on its finances or operations, or we may issue an order instituting more formal procedures, either a show-cause proceeding proposing the suspension or revocation of the carrier's authority or a formal investigation into the carrier's fitness. In a fitness case where there are substantial material issues of disputed fact that cannot be resolved adequately through show-cause procedures, the oral evidentiary hearing process may be utilized.

Finally, in addition to continuing fitness reviews conducted as a result of perceived problems with a carrier, reviews of a carrier's fitness are also conducted under section 204.8 of the Department's rules. That rule provides, among other things, that any carrier that ceases operations for any period of time (even as little as one day) may not resume service until it has had its fitness redetermined by the Department. Redetermination of a carrier's fitness under this regulation can be either a relatively simple process or a more lengthy procedure, depending upon factors such as the duration of the suspended operations, the reason for the suspension, or how recently the carrier has had its fitness determined.

Section 204.8 also provides that any carrier that has been found fit to conduct air transportation operations and that does not commence operations within one year of the date of the fitness finding will automatically lose its authority after the one year. Further, the regulation provides that a carrier that commences operations within one year after being found fit, but then ceases operations and does not recommence service for a period of one year, will also have its authority automatically revoked. Should such a carrier wish to operate at some point after its authority has been so revoked, it must file a new application for certificate or commuter authority, along with complete fitness information. These applications are then handled in the same manner as an application from a carrier that had never held operating authority from the Department (see section on Initial Fitness, above).

CHANGES IN FITNESS PROGRAM

Since the fitness program was transferred from the Civil Aeronautics Board to the Department in January 1985, we have made a commitment to ensure that the program would be successful in fulfilling its goal of protecting the public against unfit or unscrupulous air carriers. To accomplish this goal, we have made a number of significant changes to strengthen the fitness program and have placed increased emphasis on monitoring the continuing fitness of air carriers. We also continue to review and reevaluate our rules and procedures to determine where other changes should be made. In enacting new rules and procedures, we have attempted to ensure that these changes do not serve as an unnecessary barrier to new entry. Rather, the changes are intended to assist applicants by providing more specific guidelines on the type of data they must file and the standards they must meet for us to grant their applications. With respect to existing carriers, we believe that our procedures allow us to more readily identify problems which may raise questions about a carrier's fitness.

For example, the Department has refined and strengthened the evidence requirements for new applicants to require more detailed information, particularly in the financial area, in support of an applicant's fitness. This includes requiring the applicant to include projections of its pre-operating expenses and its operating revenues and expenses for the first year of proposed operations. The applicant must detail the bases for these projections and must provide third-party verification of major expense items (e.g., insurance, aircraft leases, etc.) The proposed form and source of funds must also be set forth. If an applicant has a line-of-credit with a bank or other financial institution, or if it is working with an underwriter for a public or private stock offering, it must provide a statement to that effect from the institution or underwriter. The applicant must also provide a statement from its bank concerning the amount of cash on deposit and the existence and terms of any loans.

The Department also requires that an applicant demonstrate that, before beginning operations, it has access to sufficient funds to cover all of its pre-operating expenses and expenses to be incurred during its first three months of operations. In determining the availability of such funds, projected revenues cannot be considered. While the coverage of pre-operating expenses helps to ensure that an applicant will have access to sufficient funds to commence operations, the three-month requirement provides a cushion for unexpected expenses or for overly optimistic revenue projections during the time the applicant establishes a market identity.

We have continued the practice established by the CAB of awarding certificates to carriers prior to the completion of their acquisition of financing. However, because an applicant may not always obtain the actual funds anticipated at the time of its application, we now require that the carrier submit evidence that it has actually obtained the forecast funding, before we will allow its authority to go into effect.

We have also been applying firmer criteria when reviewing the qualifications of a company's management team. Although the number of the employees and the kinds and levels of experience required will vary with the scale and complexity of the operations proposed, we have been unwilling to grant authority to carriers that do not have an adequate management team. We have required such carriers to replace or supplement existing management personnel before a favorable fitness determination is made. We have also restricted the authority of several carriers where, because of limited or part-time management personnel, we questioned their ability to manage more extensive operations.

Our criteria for evaluating an applicant's compliance disposition has been tightened. In the past, carriers were sometimes granted additional authorities despite being in less than full compliance with our regulations on a consistent basis, including most particularly our recurrent financial and traffic reporting regulations. We now withhold such additional authorizations until the company demonstrates that it is in compliance with our regulations and that it is likely to comply in the future.

Some applicants have misrepresented their safety and compliance histories by failing to report all of the accidents, incidents, or FAA enforcement proceedings in which they have been involved. We view these as serious lapses and a reason to deny a company the fitness finding and additional authority it seeks, or, at a minimum, to defer action on its request.

We have also been unwilling to grant authority to carriers where the compliance histories of one or more of their owners or officers raised serious doubts about their ability or willingness to comply with applicable rules and regulations. Applicants with questionable compliance records, which may not be poor enough to warrant outright denial of the application, have been granted limited or temporary authority while they establish a record of compliance. Existing carriers which compile poor compliance records may also become the subject of a fitness investigation and compliance monitoring.

We have also improved our fitness program by working more closely with other offices and agencies and increasing the use of computerized information sources. Our staff has obtained direct access to the FAA's Aviation Safety Analysis System (ASAS) and the Department of Defense's Air Carrier Analysis Support (ACAS) system data banks. ASAS provides information on an air carrier's safety and compliance record, including a listing of accidents and incidents and pending and closed FAA enforcement actions. ACAS provides information on the safety and fitness of air carriers that do business with DOD. That system is designed to analyze and weigh information derived from DOT, FAA, and DOD records in five categories: (1) finance, (2) accidents and incidents, (3) operations, (4) maintenance, and (5) service quality. ACAS produces a "rating" for each carrier in each category where data is available on a scale of 1 to 5 (highest to lowest). The system is designed to prompt further analyst review when a carrier's rating is low (e.g., 4 or 5) to determine the reason(s) for the rating and what further actions should be taken, including instituting a continuing fitness review or recommending increased FAA surveillance.

In addition, the Department has established a Task Force which is headed by the Deputy Associate Administrator for Aviation Standards at the FAA and the Department's Deputy Director of Policy and Administration in the Office of Aviation Analysis. This group meets bi-monthly to discuss air carriers experiencing financial and/or safety problems where additional FAA or DOT monitoring may be necessary, plan informative staff briefings, and discuss ways to improve FAA/DOT coordination and communication and air carrier safety in general. One of the achievements of this group was the FAA's revision of the operations specifications issued to air carriers to indicate that the effectiveness of FAA authority is conditioned upon the continued effectiveness of DOT economic authority. Thus, if the Department suspends or revokes a carrier's economic authority, its FAA authority is immediately ineffective. Any subsequent operations by that carrier would then be in violation of both FAA and DOT rules. The Department's Air Carrier Fitness Division staff also works closely with regional and field office FAA personnel in the exchange of compliance, financial and other information regarding air carriers and their personnel.

One of the most important changes that has come to our program is the adoption of a regulation in December 1986 (section 204.8) which provides for the automatic revocation of a certificate or commuter authority if the carrier holding that authority is dormant for a 12-month period. Dormant carriers had long been a problem to the Department and the CAB because of the difficulty in monitoring their activities. This is especially true since, during periods of dormancy, carriers frequently undergo substantial changes which cannot be detected easily through our reporting systems. In addition, we found that individuals seeking to circumvent our fitness process attempted to obtain authority through the acquisition of these dormant carriers. Over 130 commuter and certificated carriers that were dormant when this rule went into effect lost their authority. The regulation also provides that carriers that cease operations for any reason must have their fitness redetermined by the Department before they may resume service. Prior to our institution of this rule, carriers could recommence operations without first demonstrating their fitness to do so.

Consistent with updating and streamlining our procedures, the Department uses show-cause procedures in initial fitness cases as opposed to the oral evidentiary hearings, which the CAB typically used even when there were no material issues of disputed facts in the case.

We are also devoting substantially more resources than the CAB was able to in the continuing fitness program. Close to two-thirds of the staff workload in the fitness area involves continuing fitness cases. This contrasts to approximately 10-20 percent of the workload at the CAB. In addition, the number of air carrier fitness analysts has increased from four to eight since the fitness program was transferred to the Department after the CAB was sunset. We believe that it is appropriate to devote the majority of our resources to monitoring the operations of authorized carriers since these are the companies whose services are being offered to the public and thus affect the public safety.

The Department's continuing fitness program has resulted in the revocation or suspension of the authorities of numerous air carriers that could no longer establish their fitness to operate. For example, of the 54 continuing fitness investigations completed since January 1, 1988, 22 carriers were found fit, while 18 carriers had their authority revoked for lack of continuing fitness. Of the remainder, 13 carrier's authority was suspended and one was dismissed for lack of prosecution. In addition, 15 carriers had their authority revoked after one year of dormancy as provided for under section 204.8 of our rules.

In many other cases, specific continuing fitness inquiries by our staff have also provided an incentive for carriers to make certain improvements within their companies to enhance their fitness. These carriers have become more alert to the Department's fitness standards and have been willing to make changes or take internal corrective actions to meet our requirements. Thus, carriers have made improved management changes, secured access to additional financial resources, improved their compliance with reporting requirements, and taken steps to resolve consumer or other compliance problems.

The Department recognizes the importance of the fitness program to the safety and well-being of the traveling and shipping public. We will continue to review and update the fitness rules, procedures and policies to ensure that the fitness program will be administered in a fair and effective manner.

STATEMENT OF JOHN V. COLEMAN
DIRECTOR, OFFICE OF AVIATION ANALYSIS
DEPARTMENT OF TRANSPORTATION
BEFORE THE
HOUSE SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
REGARDING AIR CARRIER FITNESS
SEPTEMBER 29, 1988

Mr. Chairman, Members of the Subcommittee, I appreciate being offered this opportunity to discuss the Department's air carrier fitness program. I will also provide a status report on the request of the Independent Federation of Flight Attendants to review the continuing fitness of Trans World Airlines.

Let me begin by briefly reviewing the fitness requirements an air carrier must meet for authority to operate as a certificated or commuter air carrier.

Initial Fitness

Under the Federal Aviation Act, anyone seeking authority to conduct operations as a certificated or commuter air carrier must be found to be a U.S. citizen as well as "fit, willing and able" to conduct the services proposed.

The Department uses a three-part test to determine the fitness of a company. First, we examine the experience and competence of an applicant's key employees to determine whether they possess the business and technical knowledge to run an airline of the size and complexity proposed. Second, we review a company's operating and financial plans to gauge the applicant's understanding of the costs associated with entry into the airline industry and evaluate whether the applicant will have the necessary funds to enable it to begin operating without posing an undue risk to consumers or their funds. Third, we study the compliance record of an applicant and its key employees to ensure there is no history of violations that may lead the Department to doubt that the carrier would comply with state or federal laws, rules and directives.

Continuing Fitness

Carriers that have been found fit under this three-part test and have been awarded a certificate or commuter authority are also subject to the continuing fitness requirement set forth in section 401(r) of the Act. That section empowers the Department to review the continuing fitness of any carrier at any time for any reason and, only "after notice and hearing," to modify, suspend or revoke the authority of a carrier if we determine that it has failed to maintain its fitness or to supply the information needed by the Department to determine that the carrier remains fit. The Department does not have emergency authority under section 401(r) to take action against a certificate before according the carrier its right to be heard. However, should we have any reason to believe that the safety of operations or passengers is being threatened, we would, of course, work immediately with the FAA who has the authority to order immediate corrective action or cessation of operations on an emergency basis.

We have developed a system for carrying out this continuing fitness responsibility which includes, first, the routine receipt and review of information from a variety of sources. We review this information to establish whether a carrier requires a more in-depth fitness review. The preliminary information we review is gathered both from Department sources and from external sources. DOT sources include reports from the FAA concerning major enforcement actions or perceived financial or managerial problems at a carrier; reports from our Office of Consumer Affairs on denied boardings and consumer complaints for individual carriers; reports from our Research and Special Programs Administration on carriers that are delinquent in filing Form 41 data and other required reports, as well as the status of any related enforcement actions; reports from other offices that deal with air carrier issues. External sources, which are equally important, include press reports and interested persons including employees, competitors, and creditors. Information that may have a bearing on a carrier's safety compliance disposition is of utmost importance to us and we rely to a great extent on the FAA for its views on such information.

Where an analysis of the preliminary data shows that a carrier has undergone substantial changes that may affect its fitness, or where actual fitness problems are perceived, we undertake a further fitness review. Such a review would include analyzing information already in the Department's possession relating to the carrier, such as Form 41 financial and traffic reports and the FAA's Aviation Safety Analysis System (ASAS) data on the company's accidents, incidents, and enforcement records. Typically, we make a further check with FAA personnel familiar with the carrier's operations to determine whether our information is up-to-date and whether there are other factors bearing on the carrier's fitness. Where appropriate, we seek information from other government sources such as State's Attorneys General, the Securities and Exchange Commission, and Bankruptcy Court officials. Although this review may be sufficient to answer our concerns, in most cases we also send a certified letter to the carrier requesting additional specific information relevant to our concerns. A copy of the letter is sent to the FAA. Depending upon the response of the carrier, we will then follow one of two paths of action.

If the carrier does not respond to our information request, or if the response does not satisfy the concerns raised by our letter, we will conduct a further review. This could include requiring the carrier to file periodic financial reports, or reports pertaining to the status of a bankruptcy case or enforcement proceeding. In cases where we see sufficiently serious fitness issues, we may recommend that the Department issue an order establishing more formal procedures. Most frequently, the procedure chosen is a show-cause proceeding in which DOT proposes to suspend or revoke or otherwise limit a carrier's certificate. Another option, of course, is to institute a formal investigation, which may even include an oral evidentiary hearing. This approach must be followed if there are important disputed issues of fact.

If, on the other hand, the carrier submits a thorough response to our information request, we may find, following our analysis of that response together with the data already compiled, that the carrier remains fit and no further procedures are necessary. In such cases, we place a memorandum in our files summarizing the pertinent information reviewed and the basis upon which the decision to close the review was reached. We generally send a letter to the carrier and to the FAA indicating that the review has been completed and that no action is contemplated, but reminding the carrier that our continuing fitness powers and responsibilities remain in force.

While most of our continuing fitness reviews can be completed within three to six months depending on the complexity of the issues involved, a case that is set for oral evidentiary hearing can take several years to complete, as happened in the Galaxy Airlines case with which this Subcommittee is familiar.

TWA Flight Attendants' Petition Status

As you know, on August 30, the Independent Federation of Flight Attendants (IFFA) filed a petition requesting that the Department:

(1) institute a public investigation into the continuing fitness of TWA; (2) prevent the TWA stockholders from meeting and voting on whether to approve Carl Icahn's plan to take TWA private; (3) require that all stock controlled by Mr. Icahn be placed in a voting trust until the conclusion of the fitness investigation; and (4) take enforcement action against the carrier for failing to comply with the information-filing requirement of section 204.4 of our rules. The stockholders' meeting took place on September 7 and an overwhelming majority of the shares were voted in favor of the Icahn proposal. Therefore, this portion of the request is now moot. On September 9, TWA filed an answer to the petition and on September 20 replies were filed by the IFFA and by the Consumer Federation of America. On September 26, the Air Line Pilots Association filed a late response in support of the IFFA petition.

Because the IFFA petition is currently pending before the Department, I am sure you appreciate that I cannot now discuss with you the merits of the petition and the responses, or of any specific actions we may take in this case. However, we are now reviewing the pleadings, which are voluminous, and the matters addressed are complex. After our staff (including that at the FAA) has reviewed and analyzed the various filings, the Department will issue an order stating whether it finds grounds to further investigate TWA's continuing fitness and, if so, what procedures it would follow to do so. I assure you that we will address the petition as expeditiously as is reasonable given the complexity of the filings and the far reaching effects our decision may have.

I will now be happy to answer any other questions the Subcommittee may have on the Department's fitness program. First, however, I would like to introduce the other Department staff who are at the table with me:

Patricia T. Szrom
Chief, Air Carrier Fitness Division

Peter H. Rosenow
Director, Special Programs Staff

Samuel Podberesky
Assistant General Counsel for
Aviation Enforcement and Proceedings

Mr. **OBERSTAR**. The subcommittee stands adjourned.

[Whereupon, at 6:03 p.m., the subcommittee recessed, to reconvene at the call of the Chair.]

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